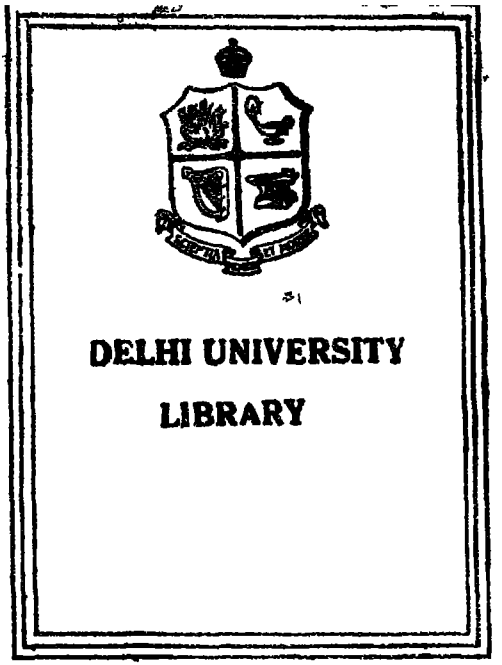
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DIVISION OF INTERNATIONAL LAW

George A. Finch, *Director*

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LEAGUE OF NATIONS AND NATIONAL MINORITIES

An Experiment

BY

P. DE AZCÁRATE

FORMER DIRECTOR, MINORITIES QUESTIONS SECTION
OF THE LEAGUE OF NATIONS

TRANSLATED FROM THE SPANISH BY

EILEEN E. BROOKE

WASHINGTON
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FOREWORD

This monograph is one of a number of studies issued by the Carnegie Endowment for International Peace in the course of its survey of Experience in International Administration. Others are being prepared on the more important topics in that field by persons who, like the author of the present study, are qualified by experience and specialized knowledge to discuss the subjects assigned to them.

The complex problem of minorities will require prompt but judicious action when peace is restored. It is believed that the experience described by Dr. de Azcárate, and his shrewd and informative comments, will be of particular value to those who are planning the machinery and drafting the procedures for dealing with that problem in the future. It will also be of general value as a record of efforts to establish effective co-operation between national and international authorities in dealing with a question once regarded as being of purely national concern.

GEORGE A. FINCH
Director of the Division of International Law

WASHINGTON
January, 1945

PREFACE

The reader must not expect to find in these pages a systematic and complete exposition of what is usually and somewhat improperly known as the "question," or "problem," of national minorities in Europe. How many times have I heard or read the statement — made nearly always in a tone of reproach — that the League of Nations was not able to "resolve the problem of minorities"! As though the "problem" of minorities (or any problems of a political or social nature) were as susceptible of solution as those of physics and mathematics! Where national minorities are concerned, what is needed is the establishment of adequate juridical and political institutions — according to the circumstances of the moment — in order to prevent the existence of these minorities from becoming a threat to peace, both internal and international.

The most detailed experiment which has been made up to now in this field was that entrusted to the League of Nations by the treaties signed after the first World War. In the following pages an attempt has been made to examine the results of twelve years' personal experience in the task of insuring that this experiment should achieve a positive outcome. It is not my purpose here to mete out either praise or blame, although the reader will find incidental criticisms or justifications of the work carried out by the League of Nations. But what is unquestionable is that this experiment and its results, both positive and negative, deserve at least to be considered as an interesting precedent if and when those responsible for reconstructing Europe find themselves once again confronted by the difficulties which national minorities have created in the past.

In the future international organization of Europe, will these difficulties arise in such a way that we shall be able to make full use of the experience of the last post-war period? That is a question to which there is as yet no answer. The so-called

problem of minorities is not so much international as national, and — let there be no mistake — what will undergo, and is already undergoing, a radical change, is not only the régime of interstate relations, but that of the political, social, economic and cultural relations which form the internal structure of states. And what we must ask ourselves is not only how states are to be related to each other, but how they are in themselves to be constituted, and above all, what is to be the future relation between states and "nations." The crisis of the classic formula, "Every nation a state and every state a nation," is now perceptible; there are manifold indications that Europe is moving towards the establishment of new political forms based on wider political concentrations (states), within which the "nations" will find appropriate conditions for the preservation and development of national values.

But so long as there are no criteria with which one can form an approximate idea of the extent to which the world, and more specifically Europe, will achieve wider political concentrations, it will be practically impossible even to sketch an outline of the new international organization, still more to define the future régime for the guarantee of the rights of national minorities.

For this reason it seems to be advisable to confine myself for the present to a statement of the results of my personal experience with minorities within that experiment which was the League of Nations, without attempting to draw any conclusions as to the form in which this experiment could be utilized in the future international organization. In my opinion such conclusions will be possible only when we all have a clearer and more definite idea as to what the foundations and rough framework of the new international organization are to be.

P. DE AZCÁRATE

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Bucks, England

TABLE OF CONTENTS

LEAGUE OF NATIONS AND NATIONAL MINORITIES

CHAPTER I

SOME GENERAL CONSIDERATIONS

1. *National Minorities*

In every human group there is a diversity of opinion, taste, inclination and outlook which, when the group is organized in the form of a society, creates a majority and one or more minorities. In the political sphere, reconcilement of the predominance of the majority with respect for and liberty of the minorities is the keystone of liberalism and one of the fundamentals of democratic organization. What was usually known, during the twenty years between the end of the last World War and the beginning of the present one, by the term "minorities question" is, however, something which, although intimately bound up with democracy and liberalism, is of more modest proportions. This term applies not to minorities in general and to the manner in which they may live peaceably with the majority, but to the specific problem of "national" minorities.

In general terms, the expression "national minority" refers to a more or less considerable proportion of the citizens of a state who are of a different "nationality" from that of the majority. The objection to this definition of a minority is that it involves such an indefinite, and probably indefinable, concept as that of nationality. It was doubtless in order to overcome this objection that the treaties ending the 1914–1918 war, in their provisions relating to the protection of minorities by the League of Nations, did not speak of "national" minorities, but of minorities of "race, language and religion." This expression, however, is by no means wholly satisfactory from the standpoint of terminology, in view of the lack of rela-

tionship between race and language on the one hand, and religion on the other. What is certain is that any legal machinery for the protection of minorities, or perhaps more properly speaking, for the guarantee of specifically recognized minorities rights, would gain considerably in efficacy if the minorities for which the machinery is established were clearly defined.

The consequences of exaggeration are as great as those of omission. Any unjustifiable extension of the definition of the minorities for which certain rights should be recognized and guaranteed, would do as much to bring about the failure of the system as would an undue limitation, by which only a part of the desired objective were achieved. In my attempt to give the necessary definition, I have no desire to establish a general formula for use at all times and in all places but merely wish to state what in my opinion may be considered the lessons of the twenty years of the last post-war period. My personal experience during this time leads me to the conclusion that what in the last resort constitutes the distinctive and characteristic features of a national minority is the *existence of a national consciousness, accompanied by linguistic and cultural differences.*

At first sight language differences are the easiest to perceive and establish, and there is, therefore, an understandable tendency to consider them as the decisive criteria in defining a minority. This tendency is, in the majority of cases, correct. I cannot forget, however, the innumerable memoranda with which the Minorities Section of the League of Nations was inundated between 1925 and 1927, on the question of whether "Macedonian" should be considered as an independent language, a dialect of Serbian, or a dialect of Bulgarian. The question could not be satisfactorily solved, and we had to resign ourselves to the acceptance of a compromise, though this did not prevent the matter from being relegated to the peaceful sphere of philological investigation as soon as the governments of Yugoslavia and Bulgaria decided to establish cordial and

neighborly relations between themselves. Apart from a few exceptional cases such as this, however, there can be no doubt that linguistic differences are the easiest to establish, and are therefore one of the best criteria for recognizing and determining the existence of a minority. These linguistic differences are nearly always accompanied by, and are usually the expression of, cultural differences. It is in its literary and artistic life and creation, as well as in its language, that the most distinctive features of a national minority are found.

Race is not nearly so distinctive a sign of a minority (or of a nationality, for in the last resort the two questions are one and the same), as language or culture. In the first place, the concept of race is much more difficult to determine. "Racialism" today is no more than a myth propounded with brazen cynicism whenever it is necessary to cover up or justify the persecution of a people for purposes of robbery and exploitation. It would, however, be as absurd to try to establish on purely racial and ethnical grounds the guarantee of special rights to minority groups, as it would be monstrous on the same grounds to deprive them of the enjoyment and normal exercise of recognized and guaranteed rights of a general nature.

In short, the substratum of a minority, from the political point of view, is that "imponderable," so vital, irresistible and dynamic, and so difficult to express in words, which goes under the name of "national consciousness." Generally, though not necessarily, linguistic and cultural differences are, as has already been said, among the principal factors determining the existence of a national consciousness. But they are not by any means the only ones. Race and religion also play their part, together with innumerable factors of a historic, economic, psychological, geographical and family nature. The proportions of these factors vary infinitely, but they are responsible for an indefinable sense of community, of union, of internal solidarity in the past, present and future, and also for

that latent feeling of opposition and, at times, even of hostility towards foreigners which is only manifested in special circumstances, but which gives to the national consciousness its profound and vital force.

The problem of religious differences is quite unlike that relating to linguistic and cultural differences. Freedom of conscience and religion appears to have been definitely part of the political and juridical patrimony of western civilization, and it is highly evident that the existence in a state of a régime of freedom of conscience and religion makes any institution for the recognition and guarantee of special religious minority rights quite unnecessary.

It may be doubted if it was needful or judicious to include religious minorities in the 1919 treaties. This inclusion may have been due to the influence in the preparatory work of powerful Hebrew organizations. It added to the considerable difficulties already experienced, without having any international justification. In drafting future provisions respecting minorities, religious differences should be unhesitatingly set aside, as they represent a problem which should be dealt with in the natural and progressive evolution of ordinary public law. The modern state has ceased to be a confessional one, and there are religious minorities everywhere. Their situation would be regularized if a "charter" of the rights of man, guaranteed by the entire international community, were generally adopted. In fact, the number of cases of religious oppression with which the League of Nations had to deal was insignificant compared with the cases involving economic, cultural and political matters.

2. *National Minorities and Frontiers*

Is the existence of national minorities caused by a defective tracing of frontiers? Could national minorities be suppressed by a just tracing of frontiers? Is it possible to form states com-

prising only peoples of the same race and language? In Europe, the reply to these questions must be a categorical negative. No tracing of frontiers could suppress the existence of national minorities, and assure the *national* homogeneity of the peoples of each state. The achievement of such homogeneity would be a physical impossibility without first effecting a transfer of such large masses of the population as to make the proposition absurd.[1] And the reason for this is that the territories and regions where national minorities exist are precisely those where the population is most mixed from a racial and linguistic point of view. There are in Europe large areas inhabited by homogeneous populations, but they are always those areas which constitute the territorial bases of states, and the homogeneous groups in question are therefore the majorities — that is to say, the nuclei of population determining the national character of those states. Territories inhabited by homogeneous minority populations, however, either do not exist at all or exist only in very exceptional cases. This is due to the fact that minorities are usually the result either of the alternating domination of a territory by two nationally distinct states, or of colonizations carried out by a state in territories under its domination but inhabited by autochthonic peoples of a different nationality from its own. No tracing of frontiers could therefore suppress minorities in areas such as, for instance, Transylvania, Upper Silesia, the Sudetenland, Banat, the Dobruja, or what was known as the "Polish Corridor," because all these territories are inhabited by mixed populations; and whatever partitions may be effected, or in whatever states these populations may be partially or completely incorporated, at least a portion of them must inevitably be assigned in each case to a state whose majority population belongs to a nationality which is different from their own.

[1] In a later section of this chapter the extent to which transfers of population might contribute to a partial solution of the question will be discussed (see below, "The Suppression of Minorities," pp. 16 ff.).

This does not mean that, from the national point of view, some frontiers may not be more just than others, and that, in consequence, a reasonable retracing of frontiers may not considerably reduce the difficulties to which the existence of national minorities gives rise in internal and international political spheres. On the contrary, it is obvious that in the tracing of frontiers, *national* considerations should play a principal rôle, together with those of an economic and military character. In any case, it is to be hoped that the experience of the last revision of the map of Europe (above all of Central Europe) made by the Peace Treaties of 1919 will help people to realize that national considerations are important also from the point of view of the security of states, in the sense that frequently the forced introduction into the state of thousands, or hundreds of thousands, of "minority" citizens can neutralize even the additional security given by a strategically advantageous frontier. The principle of basing frontiers on national factors, moreover, cannot be applied in an absolute form, for it may well happen that if only "national" considerations are acted upon, frontiers will be established which will destroy the effectiveness of the state they delimit. Czechoslovakia after the Munich Agreement of September, 1938, is a typical case in point and shows how dearly one has to pay for dealing with such complex and delicate matters with the inconstancy characterizing the British and French policy of the day.

I do not propose here to enter into a critical and detailed examination of the frontiers traced by the 1919 treaties for the states of Central Europe and the Balkans. Speaking of them as a whole I would say that, while far from perfect from the national point of view, they were nevertheless not as iniquitous as the "revisionist" campaign has tried to represent them. This campaign, prosecuted with particular fervor by Hungary during the twenty years of the last post-war period, has done much to distort the question of the new frontiers,

and has made it difficult to form a calm and objective public opinion on the subject. If we are to review the past without recrimination, and solely with the object of deriving from it useful lessons for future European reconstruction, it is essential to recognize that so-called "revisionism," with its exaggerations and its equivocal attitude, has not only failed to facilitate the revision of frontiers where such revision was feasible and justified, but has even placed obstacles and difficulties in its way. The natural resistance to all change on the part of those countries benefiting by the new frontiers, and the follies and exaggerations of the revisionist campaign carried out by the countries who considered themselves "victims," made it impossible to form any neutral public opinion which might have served as a lever and regulator for the mechanism of Article 19 of the Covenant, whereby possible and reasonable frontier revisions could have been effected.

The nature of revisionism was always equivocal. It was never clear whether it claimed a return to their former owners of the territories adjudicated to the new or enlarged countries[1] or merely demanded local frontier rectifications for the purpose of remedying such injustices and anomalies as a farm separated from its stables, a village from its well, etc., injustices of which much capital was made in the revisionist campaign. The truth is, however, that Hungarian revisionism was dominated by the idea of an integral restitution of all the territories handed over under the Treaties of St. Germain and Trianon to the "successor" states (Transylvania to Rumania, Banat to Rumania and Yugoslavia, Slovakia and Sub-Carpathian Russia to Czechoslovakia). As late as 1929 and 1930 the Hungarian maps of Hungary still included the territory lost in 1919, marking the new frontiers in the interior with a clear line. I myself

[1] Apart from those portions of Germany handed to Poland, and areas of secondary importance in the Balkans, the territory concerned was Hungarian land adjudicated to Rumania, Czechoslovakia and Yugoslavia, and this explains why revisionism was a characteristic of Hungarian policy.

have seen such maps in use in the Hungarian schools, and on view in the official centers and bookshops of Budapest. Now no one can reasonably expect that, only a few years after the drawing up of the new frontiers, such "integral" revisionism could be carried out by means of machinery established in the Covenant and requiring mutual agreement between the interested states. Moreover, "integral" revision of that nature would not only have destroyed the whole political edifice constructed in 1919, but would have established a situation entailing unquestionably greater injustices than those created by the treaties of that year. Considerable proof of this, indeed, lies in the fact that practically the only merit of the new Rumano-Hungarian frontier drawn up by the German and Italian dictators in 1940 lay in its novelty; and if it succeeded in lessening by a few thousands the number of Rumanian citizens of Hungarian nationality, it increased by perhaps as many the number of Hungarian citizens of Rumanian nationality.

An attempt to investigate the causes for the failure of the safety valve represented by Article 19 of the Covenant, as far as the revision of frontiers is concerned, may help to prevent such mistakes in the future. As has been said, both parties contributed towards this failure — the "beneficiaries" by their resistance, the "victims" by their ambition. The resistance of the "beneficiaries" gave an excellent pretext to the "victims" to throw the entire blame on the former, but the exaggerated ambition and equivocal attitude of the latter gave the other side a no less excellent pretext for refusing all compromise, while alleging the uselessness and danger of any policy of partial revision. This dangerously ambiguous situation was prolonged for years during the last post-war period, notwithstanding the fact that many powerful neutral governments did not fully approve the frontiers established in 1919; and despite the existence of a widespread public opinion favoring a limited "revision," no one dared to support the "vic-

tims" for fear of being carried away by the turbulent torrent of integral revisionism.

All this (and much more) must be carefully borne in mind in any attempt to draw new frontiers in Central Europe. The tracing of boundaries involves not only difficulties, but two dangerous pitfalls which should be avoided: The frontiers must neither be given a definite and permanent character, nor a purely provisional one. The latter course would encourage every kind of ambition and would be a certain obstacle to the stabilization of Europe. It is perhaps advisable to limit the provisional nature of frontiers in both time and space — in time, by fixing a time limit within which revision could be effected; in space, by making it perfectly clear that revision could only make local adjustments designed to remedy concrete and well-defined injustices, and could not bring about territorial redistribution as such, which redistribution constitutes the main object of frontier delimitation as distinct from mere revision.

In the question of frontiers, however, one consideration should supersede all others, and that is that any frontier, however objectively traced, becomes intolerable when the two countries whose territories it limits are mutually hostile; and that, conversely, the most absurdly traced frontier may be perfectly tolerable if the two countries which it separates enjoy cordial and neighborly relations. Dozens of examples justifying these two assertions could be quoted. Two instances in support of the second are the Franco-Swiss frontier in the Canton of Geneva and the Franco-Spanish frontier at Le Perthus. Among other curious circumstances in both cases is the fact that the frontier follows the border of a highway and separates the road itself from the houses on the other side, so that every time one enters or leaves one of these buildings (and in the case of the Franco-Spanish frontier most of them are shops) one crosses the frontier. An instance justifying the

first assertion (which deeply impressed me when I saw it) was the frontier between Yugoslavia and Bulgaria in the year 1926–1927, a frontier formed by forts and thick barbed wire which spread out to the horizon on either side of the railway line. These fortifications were erected not for defensive purposes, but merely to represent a token barrier separating two countries between which relations were at the time about as deplorable as it was possible for them to be. We see therefore that what is of as much importance as the tracing of a frontier — or perhaps of greater importance — is the degree of cordiality in the relations of the countries which it delimits. It is also true, however, that a just frontier is frequently one of the main causes for cordiality and that an unjust one may be one of the chief grounds for hostility. And this is perhaps the reason why the tracing of frontiers is of such positive importance in international life.

Another frequent danger in the delimitation of frontiers is the way in which the historic argument is customarily abused. In 1919, when the frontiers of many European countries were fixed, and during the whole of the post-war period, this argument was constantly employed to justify or attack the cession of some region or another to a specific state. We were repeatedly reminded, for instance, of the territories belonging in the fourteenth, fifteenth and sixteenth centuries to the Kingdom of Bohemia, to the Crown of Hungary, or to the Kingdom of Poland. All such facts may have a certain historic interest, but their importance should not be exaggerated when fixing present-day frontiers. It would be absurd to try to reestablish a situation existing at some specific moment in history, merely because such a situation had once existed. If we were to do this, the first question to answer would be: What historic moment? Yet once that had been decided, it would be difficult not to concede as much importance to what came after as to what went before. These remarks apply particularly to those cases

where the existence of a minority is the result of a colonization which took place centuries earlier. It would be out of the question to try to reestablish the *status quo ante*, obliterating with a single stroke of the pen the centuries which followed that colonization, and whose historic reality is no less than that of the centuries which went before.

Moreover, from a human point of view, any attempt to reestablish remote historic situations must necessarily be artificial. Human nature soon forgets. And if today we want to repair a past injustice, we run the risk of committing another and perhaps more serious one. In this connection the Roman aphorism *summum jus, summa injuria* may be cited to advantage.[1]

3. *International Protection of Minorities*

The existence of national minorities within the confines of a certain number of European states is, therefore, a demographic reality which must be borne in mind in any attempt to establish an international rule of law. These minority groups are exposed, by their very nature, to the danger of oppression by the dominant majorities in the states of which they form a part, and as this oppression is the cause of pain and suffering to the individuals of the minorities, the idea arises of *protecting* them against these dangers.

[1] When I went to Granada in 1915, as Professor of Administrative Law in that University, I found the city in a state of profound agitation as the result of a proposal by the Alhambra architect to pull down the superb grove of trees covering the hill and surrounding the palace, on the grounds that the Alhambra, built in the thirteenth and fourteenth centuries, was a fortress, and that it was out of keeping for such a building to be surrounded by a thick and leafy grove. In the architect's opinion, it was essential for the hill to return to the nudity of the Middle Ages, so that the walls of the Alhambra should regain their original aspect. This not unnaturally provoked a wave of indignation, which saved the trees and lost the architect his job. The people generally very sensibly refused to sacrifice the plantation of the eighteenth century to the fortress of the fourteenth. Both, they felt, should be preserved, and fortunately both were. This same good sense should govern the application of historic criteria in the tracing of new frontiers. Every period should be taken into consideration, and the claims of no special period should prevail over the rest.

It is essential, however, to draw a distinction without which one cannot appreciate the real sense and importance of the system of protection of minorities established by the treaties ending the war of 1914–1918. Failure to do this has been the cause of continual false judgments on the results and degree of efficiency achieved by that system.

The essential aim of such protection might be to shield the minorities from the danger of oppression by the majorities and from the pain and suffering, both moral and material, which such oppression necessarily causes. In that case, the system established would be of a purely humanitarian nature, whose efficiency could be gauged by the extent to which it had succeeded in its aim.

The protection of minorities instituted by the treaties of 1919 and 1920, whose application was entrusted to the League of Nations, was not, however, of that type. Its aim was not humanitarian, but purely political. The object of the protection of minorities which those treaties committed to the League of Nations was to avoid the many inter-state frictions and conflicts which had occurred in the past, as a result of the frequent ill-treatment or oppression of national minorities. Save in very exceptional cases (perhaps the only one worthy of mention is that of the Jews), the minorities belonged to the same nationality as that of majorities in other states, and it was therefore practically inevitable that these states should be interested in their fate. In many cases the latter even took steps in opposition to the governments concerned, to *protect* the minorities against the oppression of which they were victims. It is easy to understand that this was a fertile source of quarrels, and quarrels of an especially difficult nature, since they resulted from foreign intervention in matters which were, after all, domestic concerns; and the danger was aggravated when, as frequently occurred, the two states involved were adjacent.

Now those who in 1919 drew up the international statute which was crystallized in the treaties signed at the time, and in the Covenant of the League of Nations, thought that the best way of putting an end to such a deplorable state of affairs, fraught with constant peril and a menace to international collaboration, was to *internationalize* the protection of minorities, committing it by means of special treaties to the League of Nations. Only then would it be possible, they thought, to prevent states from interfering in questions concerning national minorities in other states, or at the very least to mitigate the dangers from interference by requiring an interceding state to act through the League of Nations and the institutions especially created by the latter to that end, thus avoiding direct and dangerous discussions on delicate questions between governments.

These considerations are of a real and positive interest in any attempt to pass judgment on the manner in which the League of Nations fulfilled the mission concerning national minorities entrusted to it by the treaties. Without going deeply into the question, it may be opportune to remark that before forming such judgment we must discover to what extent the League succeeded, not so much in ending or lessening the oppression of minorities (a humanitarian activity with which it was not entrusted), as in preventing the greater or lesser oppression of minorities from provoking international disputes or conflicts. I realize that the difference between these two points of view may appear, to a superficial observer, as little more than verbal juggling, since obviously the most effective method of preventing national minorities from disturbing peaceful inter-state relations is to insure that these minorities receive from the respective authorities a reasonable and equitable treatment which can give rise to no complaints or protests of any kind. To state the problem in those terms, however, is to over-simplify it. In political reality things are

more complex, and circumstances can easily be envisaged where a strict and rigorous application of this method not only would not contribute to international pacification but would have a contrary effect. But however this may be, we may content ourselves with stating this distinction clearly, and with defining precisely the *political* objective of the protection of minorities which the treaties of 1919 entrusted to the League of Nations, as distinct from the humanitarian objective which has never entered its sphere of action.

4. *The Suppression of Minorities*

The most radical method of preventing national minorities, and the treatment to which they are subjected, from provoking international disputes or conflicts, would be to put an end to them altogether. By this I do not, of course, mean their physical suppression by scientifically organized massacres. I refer to a procedure which, while avoiding bloodshed, nevertheless represents immense cruelty and incalculable suffering: the interchange or forced transfer of populations, so much in vogue recently among certain people, of whom it can hardly be said that they are noted for their respect for the human personality. I am not ignorant of the fact that the transfer or interchange of population may be a practical means of readjustment between nationalities and frontiers in certain specific and clearly defined cases. But to consider it as an expedient applicable to all minorities seems to me outrageous. Such a measure would necessitate the uprooting of great masses of peasant population from lands which their ancestors have cultivated perhaps for centuries, and the transfer of other no less considerable groups of urban population from towns and cities where they and their forebears have lived for generations. But serious as this uprooting would be, there is, in my opinion, an even worse aspect of the forced transfer of populations. What forces me categorically to reject this interchange as a general prescrip-

tion for the political ills caused by the existence of national minorities, is a more lofty consideration. If human society were to accept the general application of this method, it would admit, in the first place, its inability to organize itself in a form in which peoples of different race, language or nationality may live peaceably together and collaborate in an ordered manner. Besides this, however, a precedent would be established which, if generalized, would prove, *ad absurdum*, its own inconsistency. For after all, these differences of race, language or nationality are only some of the many differences inherent in every human society. And if we acknowledge ourselves defeated by them, and have recourse to the barbarous and cruel method of separating men, as though they were herds of sheep, into homogeneous national groups, in what way shall we solve other differences? Would it not be tempting to eliminate political and social distinctions by grouping men in such a way that all those with similar ideas or doctrines should live together? Homogeneity never has been, nor ever can be, an ideal for the organization of human societies. On the contrary, diversity of mentalities, temperaments, aptitudes, ideas, beliefs, has always been rightly considered as a source of material and moral prosperity and strength in nations and states — provided, of course, that in these social groups the rational principles of solidarity prevail over the primitive instincts of struggle and destruction.

It has always been difficult for me to appreciate the essential difference between this interchange of populations and outright expulsion. Both, in fact, rest on the same principle: homogeneity within the social group. Reciprocity is a secondary factor which does not affect the fundamentals of the question, and interchange is not very different from two instances of expulsion, one contemporary and the other historical. Hitler, in expelling the Jews from Germany, hoped to insure the racial homogeneity of the German nation, just as Ferdi-

nand and Isabella tried, by a similar process, to achieve the homogeneity or religious unity of the Spanish nation. It should be noted that in the case of the latter, however, there was a mitigating element in the sense that, while nobody can change his blood or his race, everybody has it in his power to change his religion, and the Spanish Jews had only to become converted to Catholicism to remain free from all danger of expulsion. It should be noted also that in those days such religious pressure was considered by no means blameworthy, particularly since, in the eyes of those responsible, conversion to Catholicism not only freed the converts from all the horrors of exile but guaranteed them eternal salvation. Doubtless Hitler, and perhaps the Catholic sovereigns, too, would have had no objection in principle to accepting in exchange, if circumstances had permitted, an equivalent number, respectively, of "Aryan" Germans or of "Catholic" Spaniards, but this would not have changed in the least the fundamental character of the measures; measures which the rest of the world today regards as inhuman in their objective — since society is diverse and it is inhuman to strive to unify it by force and violence — and inhuman in their results, since they arbitrarily imposed immense and undeserved suffering on large masses of innocent people.

These objections do not apply to a procedure which has been used traditionally in cases of territorial modifications, and by means of which the inhabitants of territories undergoing a change of sovereignty receive the maximum facilities for *opting* between the nationalities of the ceding and of the beneficiary state. In the Peace Treaties of 1919 and 1920, and particularly in the Minorities Treaties, this right of option was the object of carefully elaborated guarantees. Thus the Minorities Treaties contained a clause by virtue of which those who inhabited territories ceded to a certain state, and who therefore acquired full right, without any formalities, to the na-

tionality of that state, could freely opt for any other nationality which they might be entitled to acquire. Those who chose another nationality were obliged to transfer their home, within a period of twelve months, to the state for whose nationality they had opted, and were given the right to preserve their landed property, and to take with them their movable property without any export restrictions.

The same principle, applied in a collective form, served as the basis for a system of voluntary interchange, which was carried out with satisfactory results between the Bulgarians who remained within the new Greek frontiers after the war of 1914–1918 and the Greek population of Bulgaria. This interchange will afford a useful precedent for the future, and the possibility of applying the principle in a more extensive and elaborate form within the new international organization to be evolved after the present war is worthy of careful study. The key to the system consists in the creation of an international organism, of guaranteed impartiality, strong enough to insure the fulfillment of its two main objectives. The first of these is the carrying out of all operations necessary for effecting the change of nationality and the material transfer of those who declare themselves ready for this change, with all the accessory and subsidiary measures of registration, sale of property, cession of lands, etc. The second is the prevention of pressure by the authorities on the interested populations and of the transformation of what was established as a voluntary and spontaneous exchange into a forced one. In the Greco-Bulgarian experiment the functioning of the system was entrusted to an international commission of four members, which was given the necessary auxiliary services. As a whole it achieved very valuable results, and succeeded in lessening considerably the extent of minority questions between Greece and Bulgaria.

All facilities which may be granted for these readjustments between populations in the case of territorial exchanges,

whether in an individual form as the result of option, or in a collective form by voluntary exchange, will help very considerably to avoid not only individual suffering, but also conflict and tension between the states.

5. *"Equality," the Cornerstone of the Protection of Minorities*

It must not be thought, however, that with the application of these expedients the thorny problem of minorities will be solved. However wide this application, it will not, within the limits of voluntary exchange, succeed in eliminating all national minorities, and it will always bear within itself the seeds of possible discord and difficulties of an international nature.

On the other hand, is there any justification for the pessimistic view that it is beyond the limits of human possibility for men of different language, race or nationality, to live peaceably together within the frontiers of one political state?

It is true that history offers us abundant examples of struggles and persecutions, carried out if not for national motives, at least for religious ones — in past centuries the latter played a rôle similar to that played by the former in recent decades. But even in the religious sphere, dark as has been the spirit of intolerance and persecution, there has always been a brighter side which gives ground for confidence. As I have already cited Spain in connection with one of the most typical cases of intolerance and persecution — that of the expulsion of the Jews by Ferdinand and Isabella — I shall now cite that country in another connection, i.e., the relations between Christians and Moslems during the eight centuries in which they lived together in the Iberian Peninsula, an admirable example of tolerance and mutual comprehension.

In the Iberian territory ruled by the Moslems during this long historic period, apart from certain cases of repression and struggles on specific occasions, both the religious organizations of the Christian Catholics and the new-born Spanish language

were respected in a manner which many modern states might do well to copy. That this tolerance was genuine and effective, and that the Catholic Church enjoyed independence under Arab domination, is evidenced by the fact that in Spain it gradually assumed a character peculiar to itself, with rites which evolved in a different manner from those of the Church under Christian domination elsewhere. When Alphonso VI of Castile reconquered Toledo in 1085, a conflict arose between the upholders of the rites known as "mozarabic," used by the Moslem-dominated Church, and the supporters of the Roman Catholic ritual; and although the latter finally triumphed as a result of influence exerted by the Pope, the "mozarabic" rites did not completely disappear, and there is, in fact, a chapel in Toledo Cathedral in which they are still observed during mass. A similar situation with respect to the Moslem religion existed in Christian territory, as is shown by the fact that after his conquest of Toledo, Alphonso VI gave orders not only that the Moslem ecclesiastic organization should be scrupulously respected but also that the large mosques should continue to be dedicated to their own form of worship, for the benefit of the considerable number of Moslems who remained in the city. And we find an analogy to this in the conquest of Valencia by the Cid.

If in the Middle Ages, therefore, peoples of different religions were able to live peaceably together within the same state, it should certainly not be impossible for national majorities and minorities to do so in these days. No efforts made to discover the political and juridical formulae most likely to achieve this end have ever been in vain, nor will they be in the future.

Ordinary common sense tells us that this peaceful manner of dwelling together is not possible unless a régime of real and effective equality is established within the state between the majority and minorities. All systems of minority protection

must necessarily be based on what the Minorities Treaties of 1919 and 1920 justly termed "equality before the law," "equality of civil and political rights," and "equal treatment and security in law and fact." If it were necessary to define their object in a phrase or two, it might be said that it consists in establishing and guaranteeing to the minorities, in respect of the majority, "equality before the law" and "equality of treatment" on the part of the public authorities.

To go beyond such an object would be to create a régime of privilege for the minorities which would be an obstacle to the internal consolidation of the state. To stop short of it would leave them in a position of inferiority which would justify the discontent not only of the minorities themselves but of the kindred states, and of all right-thinking people. It is not enough, however, to proclaim the principle. It is essential to analyze its component parts.

Proceeding from the simple to the complex it may be said that equality implies, in the first instance, the protection of minorities against the danger of discriminatory treatment by the authorities of the state to which they belong. At first sight this danger may seem obvious and easily avoidable. In practice, however, certain difficulties may arise. Does the adoption of this rule of equality mean, for instance, that if the state authorities subject the majority to treatment which outrages the elementary principles of humanity, the minorities must resign themselves to becoming victims of such treatment as well? Unfortunately this question became rather more than a merely academic one during the last post-war period; minorities such as the Ukrainians in Poland, the Macedonians in Yugoslavia, and during the first years of the period, the Hungarians in Transylvania, were continually making complaints to the League of Nations concerning the cruel treatment meted out to them by the police and military authorities of their respective states. It is true that in no case did the interested government

plead as justification that whatever might be thought of such methods, their application to the minorities was not "discriminatory treatment," since the same methods were also applied to the majority. But the fact remains that although this explanation was not the official one, we ourselves knew quite definitely that it could well have been given, seeing that it was perfectly true. And what should have been done if it had been given? Should the "equality of treatment" clause have been interpreted *strictu sensu*, leaving the minority to endure cruel and inhuman treatment, on the pretext that the same treatment was applied to the majority, or should it have been interpreted widely, thus giving the minority a privileged position vis-à-vis the majority?

Here a further situation presents itself where the same doubt arises and perhaps even greater difficulty. The Minorities Treaties contain a second clause concerning equality, in accordance with which the members of the minorities have an *equal* right to create, direct and control at their own expense, religious, charitable, or social institutions, schools and other educational establishments. But what should be done if this right is refused to the majority as well as to the minorities? Should this clause be interpreted as preventing the state from prohibiting the creation of private schools, or must the minorities resign themselves to losing their own private schools, if the measure is general and also applicable to the majority?

This is, however, not the only difficulty in the way of the practical application of the principle of "equal treatment," nor even the most important one. National minorities have their own specific needs which will not be satisfied merely by the equal and universal application of law throughout the state to all inhabitants alike. Such law may well be designed to meet the quite different needs of the majority, in which case the simple guarantee of *negative* equality, confined to protecting the minorities against unfavorable discriminatory treatment,

would leave the latter in a position of inferiority vis-à-vis the majority, and would not therefore produce an effective equality.

We should bear in mind that a national minority is formed by a group of people with a national consciousness distinct from that of the majority, manifested as a general rule by a difference of language and culture. For the members of this minority to live on equal terms with the majority, it would be necessary for them to have the juridical, social, economic and cultural institutions which would allow them to preserve their national consciousness, and to cultivate and develop their own language and culture under the same conditions as the majority. For this purpose, protection against unfavorable discriminatory treatment is not enough; real equality — not merely formal but substantial — demands positive and special measures for the minorities. It is therefore inevitable that to some extent the protection of minorities should appear to the superficial observer as an exceptional régime *in favor* of the minorities, and this has created and will create a very serious difficulty, especially in the case of minorities whose loyalty to the state of which they form a part is open to question.

This aspect of the problem is particularly troublesome when the minorities concerned enjoy a more advanced political or cultural development than the majorities in the states to which they belong. In the cultural sphere that difficulty is greater than in any other. In principle, each minority should have at its disposal cultural institutions suitable to the degree of its development, irrespective of those established for a majority less culturally advanced. But no one with the slightest political experience can fail to realize the immense difficulty of applying this principle strictly, when the cultural development of a minority or minorities is considerably superior to that of the majority. In this, as in so many other questions, those directly concerned with the minorities problem had to resign

themselves to the adoption of formulae of compromise, even at the risk of giving full satisfaction to none.

In the political sphere the difficulty is not so great, first, because political development is less obvious than cultural development, and secondly, because different political (as distinct from cultural) institutions within the same state for the majority and the minorities would be completely impracticable. The difficulty does require a solution, however. It could be overcome by a measure which would at the same time represent considerable progress in the sphere of international juridical organization, i.e., the acceptance by all states, without distinctions or exceptions, of a "charter" in which the fundamental rights of the human personality would be laid down and which, by general consent, would be guaranteed by the international community.

Besides this "exceptional" factor inherent in the guarantee of "equality before the law," there is another which, though not inevitable like the former, has been a constant irritant in the countries where it existed, and has caused hostility to the system of minority protection itself, at times creating difficulties in the loyal and strict application of the treaties on the part of the governments concerned, and at other times serving as a pretext for a negative policy. The other factor referred to is the establishment and application of the protection of minorities in a limited number of countries only. This application in some areas but not in others was more or less justified, since the countries accepting these special obligations in the Peace Treaties (with the exception of the conquered states) were, as a general rule, those in which the minorities were important in size and cultural development. Unfortunately, there existed from the very first certain situations which were contrary to any such general rule, among which we may cite that of the large German minority in the Southern Italian Tyrol.

But however this may be, there can be no doubt that the

"exceptional" nature of this first experiment in protecting minorities created a state of mind by no means favorable to a generous and liberal fulfillment of the minority obligations on the part of the countries which had accepted them. This state of mind was particularly noticeable when the Baltic countries placed before the League of Nations certain proposals for generalizing the régime of minority protection in all countries, and when in reply the League Assembly, during its 1922 session, confined itself to expressing the hope that the states not bound within the League by legal obligations concerning their minorities would treat the latter with the degree of justice and tolerance demanded by the treaties. In 1925, the question was once again placed before the Assembly and the Council, the only practical outcome being that the representative for Brazil, who was at the time the *Rapporteur* for minority questions in the Council, made a *personal* declaration in which he completely opposed the point of view of generalization.

It would not, in my opinion, be reasonable to attempt to prevent irritation by giving a universal character to the régime of minority protection. The minorities, and the problems which they raise, exist in specific territories, and there is no doubt that for minority protection to be effective the conditions in the states to which the system must be applied should, as far as possible, be borne in mind. A generalized, uniform system would therefore be a dead letter in the majority of countries, and would only be partially applicable in others. On the other hand, the general acceptance of a "charter" of the rights of man, with an international guarantee, would help very effectively to prevent friction.

Finally, now that we are able to view in a certain perspective the twenty years of the first experiment in the international protection of minorities, I have no hesitation in stating that one of the aspects of the problem will have to be studied with special care and attention if more satisfactory results are to be

obtained than hitherto. These twenty years of experience have shown us that those entrusted with the mission of protecting minorities have to carry out their duties in the midst of the strongest political passions, and to intervene in what constitutes the most sensitive sphere of the political life of a country. If benefit rather than harm is to result from this mission, it is essential that the international organization for the protection of minorities should be not only entirely impartial but free in its origins and constitution from all taint of injustice or privilege. It must be recognized that the system of the protection of minorities, as it was established in 1919, was not altogether free from such a taint, and this no doubt constituted one of the causes of its weakness.

CHAPTER II

NATIONAL MINORITIES OF EUROPE

1. *Finland and the Baltic Countries: Latvia, Estonia, Lithuania*

In reality, neither Finland nor the group known as the Baltic countries ever created any important minority problems. At no time were the Swedish elements in Finland, or the special situation of the Aaland Islands, the cause of conflicts. As far as Latvia and Estonia were concerned, they were wise enough to establish on their own account a régime of wide cultural autonomy for the German minorities, which, if it did not entirely put an end to the aggressiveness of the latter, at least considerably lessened it. In fact the German minorities soon ceased to be a burning question in these two countries, and Germany never showed any particular interest in them up to 1933.

The cession of Memel to Lithuania was, it is true, a constant source of friction, and one of the potential causes of conflict in that part of Europe. Neither the autonomous régime of the city, nor the special control entrusted in this matter to the League of Nations, could prevent this. The compact German population of the territory of Memel incorporated in Lithuania never thoroughly settled down there, and was always in a state of latent hostility. It is only fair to remember that foreign influences, originating in Berlin, helped to create and sustain this situation, but it must be added that these influences were considerably strengthened by the policy of the Lithuanian Government, which did much to keep alive a spirit of discontent and hostility among the German population of Memel.

2. *Poland*

Poland, during the last post-war period, was one of the most important fields of experiment in Europe — if not the most important — as far as national minorities were concerned. And it is interesting to note that, just as the immediate cause of the 1914 war was an incident closely related with the question of the Slav population in the Austro-Hungarian Empire, so that of the present war was a question concerning the German minorities in Poland.

In the sphere of minority questions, Poland was the best client of the League of Nations. The Council of the League and its administrative organ, the Minorities Section of the Secretariat, devoted more of their time and efforts to Polish minority questions, during the twenty years of the last post-war period, than to those of any other country. It is a somewhat bitter reflection that in Poland could be seen one of the most typical examples of the failure of the League to prevent the German Government from constantly poisoning the atmosphere in which questions concerning a German minority were discussed, and to persuade the government of the country containing that minority that the most effective way of counteracting German activities was to fulfill its obligations generously and to work continuously for the cultural and economic benefit of the minority population.

* *

The population of the *German* minority in Poland during the interwar period was approximately one million.[1] It was grouped principally in two centers — the territory commonly known as the "Corridor," and that part of Upper Silesia adjudicated to Poland after the 1921 plebiscite. This minority

[1] See C. A. Macartney, *National States and National Minorities* (London: Oxford University Press, 1934), p. 515.

provides excellent proof of the fact that it is by no means always possible to solve a minority problem by a fair and just tracing of frontiers. An immense amount of ink has been spilt over the question of the "Polish Corridor" and the division of Upper Silesia; and while I would not presume to express a categorical opinion of the justice or injustice of these territorial arrangements, I would say, nevertheless, that negative criticisms of them have been numerous, and concrete proposals for their improvement have been few. The fact is that the evil cannot be remedied by a better tracing of frontiers, and that any different arrangement from that established at Versailles would have been the object of similar and even graver accusations. Hitler himself appears to have recognized this in the case of the "Corridor" when, a few hours before his attack on Poland in August, 1939, he issued a series of proposals for an adjustment of the difficulties created by this controversial zone. He proposed no substantial modification of the frontier but the holding of a plebiscite to determine whether the territory should be awarded to Germany or Poland. So far was Hitler from believing that the problem could actually be solved in this way, however, that he proposed special facilities to be given to Germany for insuring German communications with Danzig and East Prussia, in the event of the plebiscite's going in Poland's favor, and facilities for Polish communications with the sea, in case it were favorable to Germany. The object of the German Government's proposals was to put an end to the problem of minorities "as far as it is at all possible" — a significant phrase; and the German Government reserved to itself the right, in the event of a favorable outcome of the plebiscite, to proceed with an exchange of populations, a precaution which implied explicit recognition on its part of the existence in the "Corridor" of a large Polish population. But in this case, as in all others, the fairest frontier is unsatisfactory if the governments exercising authority on either side are

not inspired by a spirit of collaboration, or at least of mutual respect.

It must not be forgotten, however, that it is difficult to create and consolidate this spirit of collaboration or mutual respect when the frontier constitutes a clearly flagrant violation of the elementary principles of justice. But this is rarely the case when territories with a mixed population such as the "Corridor" are concerned, and it is hardly fair to speak of the frontier fixed by the Versailles Treaty in such terms. With this frontier, or any other, it will be necessary to have recourse to expedients similar to those foreseen in the above-mentioned German proposals, tardily put forward in August, 1939, if these territories are not to remain one of the powder-magazines of Europe.

The territorial arrangement for Upper Silesia, as distinct from that of the "Corridor," was based on a plebiscite held in 1921 under the auspices of the victorious Allied Powers. Taking the "plebiscited" territory as a whole, an absolute majority was in favor of Germany, but the Allied Powers decided that the plebiscite should be held on a municipal basis, distributing the municipal districts of the region between Germany and Poland in accordance with the results of the voting.[1] The consequence was a frontier line dividing the territory into two portions, one remaining with Germany and the other becoming part of Poland. This solution was scarcely an adequate one in view of the intensely industrialized nature of the region, and undoubtedly created serious obstacles to the maintenance and development of its very important mining and heavy industries. But here, too, it is easier to criticize the frontier thus established from a purely demographical aspect than to offer better and more satisfactory alternatives. Like the "Corridor," the territory of Upper Silesia is inhabited by a mixed population

[1] For a more detailed account of the minority problem in Upper Silesia, see below, Chapter V, pp. 137 ff.

— German and Polish — so closely intermingled that it is materially impossible to trace a frontier which would be satisfactory from a national point of view. In any event it cannot be said that the frontier based on the municipal interpretation of the plebiscite was a perfect one.

Upper Silesia affords an excellent opportunity for the examination of an aspect of the minority question which is of considerable interest from a social point of view. In general terms it can be said that in that territory the bourgeoisie and the aristocracy are German, while the proletariat is Polish. One result of these social class distinctions as between the two nationalities was that the questions concerning the Polish population in the German part of Upper Silesia during the last post-war period were never so acute as those concerning the German minority in the part adjudicated to Poland, in spite of the fact that the latter minority was less numerous than the former. Another contributing factor here may have been that the help and encouragement given by the German Government to the German minority in Poland were greater than that given by the Polish Government to the Polish minority in Germany. The German minority in Poland was, in fact, during the period in question, one of the most important "fifth columns" of Germany in Europe; and all European countries are now realizing, although late in the day, and at the cost of indescribable suffering, the supreme skill of the Hitler Government in its handling of this terrible weapon. The principal reason for this difference in the acuteness of the problems arising in the two areas, however, is that while the Polish minority in German Upper Silesia reacted against the oppression to which it was subjected more as a social class than as a national minority, in Polish Upper Silesia conflicts of a specifically national character immediately arose, on the one hand, between the German bourgeoisie and aristocracy — up to that time the ruling class — and, on the other hand, the new

Polish bureaucracy which had been installed in the territory in order to exercise effective authority on behalf of its new sovereign, the Polish Republic.

After the German minority, the second largest source of political difficulties was the Ukrainian minority in the southern part of the Polish Republic, with a compact population of about five million.[1] Although, during the last post-war period, the Poles were continually insinuating that Germany was doing everything possible to keep this minority in a constant state of agitation, my own impression was, and still is, that whatever Germany may have done in this connection, the hostility which the Ukrainian minority has always felt towards the Polish régime was deeply rooted and spontaneous. "National" Ukrainian feelings, as strong and well defined as those of any other nation, were wounded, not so much by the non-recognition of the political independence of the Ukrainian nation, as by the failure to put an end to the division of the nation into three parts — of which the largest and most important remained in the Soviet Union, a smaller part was adjudicated to Poland, and the third (Sub-Carpathian Russia) was transferred from the former Hungarian territory to the Czechoslovak Republic, on condition that the latter would grant it an autonomous régime. And we must also remember that the policy followed by the Polish Government of the day did not help to salve the wound caused by the inclusion of part of the Ukrainian nation in Poland. Psychological factors, which had their origin far back in the history of that region of Europe, were responsible for the antagonism shown by the official Polish policy toward the Ukrainian population placed within the frontiers of the Polish State.

In contrast with this somewhat somber picture of the Ukrainian minority in Poland, is the situation of the large Jewish minority (about three million).[2] The most superficial

[1] See Macartney, *op. cit.*, p. 514. [2] *Ibid.*, p. 515.

study of the political, social and economic conditions of Central European countries cannot fail to disclose the political, social and economic difficulties represented by the presence of large masses of the Jewish population. Nevertheless, it must be recognized that the policy carried out in this respect by Polish rulers during the post-war period was a very wise one. It did much to solve the difficult problem of making it possible for the Jews to share in the national life as a whole, and to contribute the valuable cooperation of which they are capable, without allowing them to gain possession of all the essential levers in the political and economic machinery of the state. During the fourteen years of my service in the League of Nations, I do not remember the Jewish minority in Poland ever raising any question or making any complaint concerning its treatment by the Polish authorities. And in my constant visits to Poland, and my very numerous discussions with Poles, both officials and others, and with the representatives of the minorities, on questions concerning the situation of the latter, I gained the increasingly vivid impression that the process of uniting the Jewish elements to the new Polish State was progressing so rapidly that it could have been cited as a model of governmental policy toward minorities.

I cannot conclude this superficial examination of the minority groups which created international difficulties within the Polish State during the last post-war period, without citing the case of *Vilna* and its district. After many discussions and alternative proposals, and as a result of the work of an inter-Allied mission sent to the territory by the League of Nations Council, an agreement was reached in October, 1920, by virtue of which the city was adjudicated to Lithuania. This decision angered the Poles, who claimed that the city in question should be included within the Polish frontiers; and scarcely was the agreement between the Poles and Lithuanians signed when the Polish General Zeligowski, at the head of a Polish division,

entered Vilna and incorporated the city and its surrounding district *de facto* into Polish territory. This action was never recognized by Lithuania and led not only to a breaking off of diplomatic relations between Poland and Lithuania, but also to a chronic state of tension between the two countries, which increased the dangers inherent in such large territorial changes as those made by the 1919 Peace Treaties in that part of Europe. General Zeligowski's *coup de main*, the first aggression carried out in Europe after the war of 1914–1918, was not justified by the composition of the Vilna population, which — although one must not rely too much on the census — probably consisted of a Jewish majority and two minorities, Lithuanian and Polish. In my opinion, General Zeligowski, by his improvised *coup de main* at Vilna, did small service to his country, for any advantages which an inclusion of Vilna in Polish territory may have gained for Poland were more than offset by the internal political weakness which an increase of some thousands in the already large non-Polish population created. Even more disastrous was the moral harm caused to the new and resplendent Polish Republic by the fact that it was the first to violate an agreement which might well be considered an integral part of the juridical European Statute established at Versailles, a Statute responsible for the renaissance of Poland as a free and independent state.

3. *Czechoslovakia*

The characteristics of the German minority of Czechoslovakia (more than three million of the fourteen and a half million comprising the total population of the State)[1] are very different from those of the German minority in Poland. For while the latter has intermingled with the Polish population in the same territories, the former, when the Czechoslovak frontiers were drawn in 1919, was, generally speaking, a compact

[1] See Macartney, *op. cit.*, p. 517.

population and therefore would have been susceptible of territorial delimitation; that is to say, the very creation of such a compact German-speaking minority in Czechoslovakia, in contrast with that in Poland, could have been avoided if the frontiers had been drawn differently by the Treaty of St. Germain. It is impossible, within the limits of this book, to enter into a critical, complete and detailed discussion of the factors leading to the drawing up of the Czechoslovak frontier in 1919, and in such complex matters there is nothing so dangerous as a fragmentary examination, which, by ignoring decisive factors, leads to mistaken and unjust conclusions. Let us leave the matter as it stands, merely adding that the territorial aspect of the German minority question in Czechoslovakia helped Hitler in his scheme of "liquidating" the country, and of openly claiming for the Reich the territories which he considered to be inhabited by a compact German population. This does not mean that Hitler's views in this respect were well founded, nor his claims justified. But it does explain why those claims did not meet with that categorical refusal from the countries of Western Europe which they might perhaps have encountered if they had had absolutely no "national" or demographic justification. This in turn does not mean, however, that I see any justification for the passive European reaction to such brutal German claims, a reaction which, if not the first, was perhaps the most important symptom of the degeneration of what were then considered to be the ruling forces of Europe. Mere recognition of the existence of compact German populations within the Czechoslovak frontiers could not, in any case, constitute a sufficient reason to admit or sanction the claim for the cession of those territories to the German Reich. As will be explained later in more detail, it is by no means obvious that the handing over of such territories to Germany was the only reasonable and just solution. Apart from the strictly "national" considerations involved, others

of a wider nature should have made the statesmen of the Western Powers aware of the abyss to which their persistent passivity in the face of repeated totalitarian aggression was leading Europe. Chief of these considerations was the fact that the Germans were intent on making their apparently legitimate grievance concerning Czechoslovakia an advantageous pretext for launching the great attack which was to "liquidate" the very existence of that country as an independent state. The mistake, or weakness, of those responsible lay in the fact that they allowed the question to revolve around the situation of the German minority. That was a grave error, firstly because it based the whole problem on a false and artificial attitude, and secondly because it furnished Hitler with the easiest means of giving his plans a veneer of legitimacy.

The truth is, and events have abundantly proved it, that "minority" preoccupations played a very small part in the great political operation planned and carried out by Hitler. It is not incumbent on me, nor is it my object here, to deal with the responsibilities which may have been incurred by those who were not wise enough to realize this truth in time, and who let themselves slide down the slippery slope of negotiations by which they intended to discover a reasonable and practical solution to the "minority" question alone. It would not have been difficult at the very beginning, however, to have exposed Hitler's true aims to the light of day, if the significant fact had been borne in mind that from the entry into force of the Treaty of St. Germain in 1919, up to the month of September, 1938, the German Government, whatever its political composition, never once showed the slightest interest, either direct or indirect, in the fate of the German minority in Czechoslovakia, or in the treatment to which that minority was subjected by the Czechoslovak Government and authorities. And such indifference cannot be explained on the grounds that the minority in question was weak and submissive, or

that it showed no signs of discontent with its situation. For during the whole of the last post-war period it was one of the most active of the minorities. Indeed, with the tenacity and energy proper to its political maturity, and profiting by the liberal régime of Czechoslovakia, it never ceased to put forward its claims, both internal and international, and was constantly sending in petitions to the League of Nations on its own behalf. But in contrast with unceasing German insistence — both public and private — on demanding attention to all questions affecting the German minority of Poland, the German Government's attitude, even toward serious questions affecting the German minority of Czechoslovakia, was one of complete indifference.

How can this contrast be explained? Partly, no doubt, by the fact that the German minority of Czechoslovakia consisted of a population which had always belonged to Austria, and that between it and the German Reich there existed a mutual lack of wholehearted cordiality. And partly by something which should be recognized objectively, i.e., the fact that the condition of the German minority in Czechoslovakia was, generally speaking, satisfactory, and that it never had to endure a policy of persecution. Most of its complaints and claims were, as we shall see in the next chapter, such as were considered almost inevitable in the transition from the old régime of Central Europe, dominated by the Austro-Hungarian Empire, to the new régime of the Treaties of St. Germain and the Trianon, i.e., complaints concerning agrarian reform, additional schools for the minority, the use of the German language in the law courts, etc. Yet even though the difference in the situation of the minorities in Czechoslovakia and Poland respectively was considerable, it was not enough to explain the contrast between the attitude of the German Government in the two cases. Underlying the explanations

given above is another factor, namely, that, in spite of all the efforts made in Geneva, it was impossible to prevent the governments from continuing to use national minorities as an instrument with which to achieve certain political aims. Up to the time of the signature of the German-Polish Agreement, one of the main objectives of German policy was to prevent the consolidation of its Eastern frontiers with the Polish State; and to achieve this the German Government stirred up feverish agitation over questions affecting its minority in Poland. On the other hand, the fact that on the southern frontiers Germany was concentrating on its Austrian objective, and that until this objective was attained it was of obvious interest to cultivate the most cordial relations possible with Czechoslovakia, explains the German Government's real reason for careful abstention from all matters affecting its minority in that country. While this is not the only case where the question of minorities has played a principal rôle in the general policy of states, it is one of the most characteristic. We shall deal with others later; but here it will suffice to state, as an impression gained from my own experience, that questions of minorities will always be more or less connected with general politics, and that it is useless to imagine that they can be resolved satisfactorily by special measures, however perfect and well administered, if the checkered course of inter-state relations is not taken into account.

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In spite of the existence in Czechoslovakia of a considerable Jewish population (about 350,000),[1] the situation of the latter, and the behavior of the authorities towards them, never gave rise to any question in which the League of Nations was called upon to intervene; and I do not believe that during the

[1] See Macartney, *op. cit.*, p. 518.

whole of the last post-war period any serious difficulties of an internal nature relating to the Jewish inhabitants of the state ever occurred.

* * *

Next to the German minority, Sub-Carpathian Russia was, during the last post-war period, the most important source of international minority questions in Czechoslovakia. This territory constituted part of the eastern end of Czechoslovakia, forming a wedge between Hungary and Rumania in the south and Poland on the north. Its population was made up of Ruthenian or Ukrainian peasants, and of Hungarian and Jewish town-dwellers. Before the war of 1914–1918 it belonged to Hungary, and it needed only a very superficial contact with the country to realize both the very backward state, in all aspects of life, in which the peasant population had been kept, and the fact that the Hungarian bourgeoisie of the cities and the large landowners, also Hungarian, had formed the only ruling classes in the whole region. Not only was the inclusion of this territory in Czechoslovakia advantageous to the latter country on strategical grounds (for it made possible a common frontier with Rumania, her ally of the time), but it also immensely benefited the Ruthenian peasants who formed the bulk of the population. The Czechoslovak Government, acting on the liberal principles which have always inspired the policy of Masaryk and Beneš, and entertaining a natural sympathy towards a Slav population, made tremendous efforts to improve the material and spiritual conditions of these Ruthenian peasants. They were no doubt influenced by the consideration that this was the most effective means of combating and overthrowing the power of the Hungarian elements in the country. I have had personal evidence of the efforts made by the Czechoslovak Government in this sphere, for in the spring of 1923, as the representative of the Secretariat of the League

of Nations, I visited practically every town in the territory, accompanied by various Czech officials, in order to make a careful study of the situation. And between that time and the year 1936, I followed closely the progress made in that remote part of the Czechoslovak Republic.

The bone of contention, as regards Sub-Carpathian Russia, was not so much the treatment of the minority populations, as the objection of the Czechoslovak Government to the establishment in that territory of the autonomous régime stipulated by the Treaty of St. Germain, and confirmed in the Czechoslovak Minorities Treaty. Technically speaking, the terms of the treaty obliging the Czechoslovak Government to establish an autonomous régime remained infringed so long as that régime was not established. Nevertheless, this case shows how dangerous is the comfortable system of drawing up measures and plans on paper, without taking any precautions to insure their feasibility. Anyone who examines the question objectively and dispassionately must recognize the strength of the arguments invoked by the Czechoslovak Government against the immediate introduction of the autonomous régime laid down by the treaties. The result of such a régime would have been to place power in the hands of those same Hungarian elements which had traditionally enjoyed it, and which were responsible for the very marked backwardness of the peasant population. And such a step was difficult to demand of the Czechoslovak Government, since on the one hand it would have defeated the object aimed at by the inclusion of the territory in Czechoslovakia, while on the other hand it was completely contrary to the interests of the Ruthenian peasants. Only when this population has achieved a minimum of material well-being, of economic strength (the latter mainly through agrarian reform), and of political consciousness, will it be possible to establish a régime of full autonomy, such as was laid down by the treaties — a régime benefiting not the

Hungarian minority in the cities, but the large mass of the peasant peoples of Ruthenia.[1]

* * *

This sketch of the minorities in Czechoslovakia would not be complete without reference to the Hungarian minority (about 700,000)[2] scattered in groups of varying sizes along the frontier between Slovakia and Hungary, principally in the city of Bratislava. As in the case of the German minority in Polish Upper Silesia, the importance of this Hungarian minority is due less to its numbers than to the fact that it consists mainly of the bourgeois class and the great landowners. And if it is an exaggeration to state that the whole of the Slovak population is drawn from the proletarian or peasant class, it *can* be said that these classes are made up almost exclusively of Slovakian elements. This circumstance, and the more or less indirect encouragement continually shown to the Hungarian minority by the Hungarian Government, made of that minority a particularly active and at times strongly antagonistic group. But the questions raised were never actually of great importance. For although there was frequently evidence of discontent, it was rarely due to anything more than natural repercussions, deplorable but inevitable in a time of transition between two régimes, such as that of the last postwar period.

With respect to the Hungarian minority, it should be added that this is another of the cases in which no tracing of frontiers, however fair and just, will ever succeed in avoiding the existence of minorities. Similarly, the frontier established in 1919 by the Treaty of Trianon failed to eliminate in Hungary the presence of some thousands of Slovaks, a population smaller in

[1] For further brief comment on Sub-Carpathian Russia, see the following chapter, pp. 86–88.

[2] See Macartney, *op. cit.*, p. 518.

size and importance than the Hungarian population in Czechoslovakia, and less active than the latter because (as in the case of the Poles in that part of Upper Silesia adjudicated to Germany) it lacked the stimulus of a brusque transition from the position of the "majority" and ruling class to that of a minority.

4. *Rumania*

The prominent position enjoyed by the German minorities in Poland and Czechoslovakia was held in Rumania by the Hungarian minority. This minority consistently put forward complaints and petitions to the League of Nations; in fact, although I have no specific data at hand, I think it is true to say that it presented more petitions to the League than any other minority except that of the Germans in Upper Silesia. This was due not so much to its size[1] as to two other factors. In the first place, the Hungarian minority of Rumania comprised all the "intelligentsia," and broadly speaking the ruling classes, both intellectual and economic, of Transylvania — one of the richest and most prosperous provinces of the former Kingdom of Hungary. In general terms it may be stated that the Transylvanian peasant was Rumanian, and the urban population (particularly the bourgeoisie and the land-owning class) Hungarian.[2] In Transylvania can be seen, in fact, another of the most typical examples of the impossibility of solving the problem of national minorities by a fair tracing of frontiers. But even granting that local injustices might have been avoided by a fairer tracing of the frontiers, it is nevertheless a fact that such injustices were neither so great nor so serious as to be of any real political interest; nor is it certain

[1] The Rumanian figure is 1,387,000; the Hungarian figure, 1,900,000. See Macartney, *op. cit.*, p. 522.

[2] In relation to this statement, however, exception must be made of the district inhabited by the Saxons in the center, and that of the "Czecklers" in the northeast of Transylvania. On the "Czeckler" minority, see p. 45 ff. and footnote 1 on that page.

that in avoiding them, other injustices, as great or greater, would not have been committed in the opposite direction. So that short of effecting a transfer of populations involving many hundreds of thousands and disturbing both urban inhabitants and peasants who had lived and worked on their land for centuries, no frontier in Transylvania could have put an end to the existence of Hungarian or Rumanian minorities, in whichever country that magnificent province were incorporated.

The second factor, and a no less important one, was the close link existing during the whole of that period between the ruling classes of the Hungarian minority and the Government of Hungary. I firmly believe that this government did not cease for one moment to use the Hungarian minority in Rumania for the purpose of making even more arduous and difficult the Bucharest Government's task of adapting the institutions of the former Rumanian State to the new conditions created by the inclusion of additional and extensive territories. And this certainly did not facilitate the work of those in Bucharest who were trying to find means whereby the minorities could live peacefully together in the new territory, or of those of us in Geneva who were encouraging and helping the Bucharest officials in their praiseworthy efforts.

Once this has been said, and the particular difficulty which these two factors created in the problem of the Hungarian minority of Transylvania has been recognized, it must be acknowledged that in general the Rumanian Government never made any real attempt to foster in the local authorities (with that firmness which so often characterized its own policy and decisions) a spirit of cordiality and collaboration with the minorities. In spite of the fact that there were few legal or administrative general measures which could be said to have been inspired by a feeling of hostility toward the minorities in general, or the Hungarian minority in particular, actually the Hungarian population very seldom enjoyed that fair treatment

which would have been conducive to the political consolidation of the country, and which was demanded by the Minorities Treaties.

The fact is that international influence and certain types of control, whether exerted in the form of pressure or persuasion, or otherwise, can easily reach a central government and central authorities, but their effectiveness is frequently lost in the complicated and labyrinthine channels connecting the government with the local authorities. This has been, and will always be, one of the greatest obstacles to the proper functioning of any system of protection of minorities. It was possible, and sometimes even easy, to change the opinion of a government on questions of a general character. But what seemed almost always beyond the ability of those in the League of Nations concerned with these problems was to banish hostility towards a minority on the part of a mayor or a local chief of police. And no great knowledge of public administration is necessary to understand the innumerable ways in which local authorities can, without formally violating the law, make life almost impossible for those who come under their jurisdiction. In Rumania this applied particularly to the police. Rumania, like France, on whom she modeled herself in so many spheres, possessed a police force whose powers were wide and almost always discretionary. This is a usual phenomenon in states passing through periods of internal reconstruction; the weakness caused by their internal crises induces them unconsciously to develop that organ of protection and security, the police force. For the minorities, however, this tendency toward a "police state" had deplorable and sometimes even tragic results.

Within the Hungarian minority the situation of the "Czecklers" (of whom there are some 500,000)[1] deserves special

[1] See Macartney, *op. cit.*, p. 522. The spelling "Czecklers" is the one employed in the Minorities Treaty with Rumania of December 9, 1919. The German form, and the form usually employed in English, is Szekler. The Magyar form is Székely.

attention. These peoples were a compact Hungarian population forming an "enclosure" inside the northeastern frontier of Transylvania. Their establishment in this area is stated by some to date back to a period when, in accordance with a common practice of the time, their forebears were sent out, organized in various "frontier regiments" of Hungarian soldiers, for the defense of the imperial frontiers in the distant confines of Transylvania. These regiments eventually became a regular colony, consisting of communities and endowed with a special legal statute, whose main clause was the concession in perpetuity of immense tracts of land (pasture and arable land, as well as mountain country). The grant of lands was made primarily with the object of insuring that these people should at all times be able to carry out their function, which was speedily and effectively to defend the frontier on which they lived. Each of these "regiments" drew up its own internal statutes, which laid down measures for putting its land to the best use. In the course of time, they lost their military character and became "agricultural communities" which together formed this "enclosure" of Hungarian peoples in a part of Transylvania which was chiefly mountainous, which had no important towns, and which was also inhabited by a compact population of Rumanian peasants.

In order to appreciate the difficulties which grew out of this situation, it must be borne in mind that the "Czeckler" communities, thanks to their huge tracts of pasture and arable land, were far more prosperous than the Rumanian population surrounding them. The consequences of this difference in prosperity were various, and were not of a nature to create harmony in the new political conditions resulting from the inclusion of Transylvania in the Kingdom of Rumania. In the first place, as the result of the "Czecklers'" economic prosperity, and because the conditions of the Rumanian peasant were below the normal standard, the former were considerably

superior in cultural development to the latter. In the second place, the Rumanian population, not without some cause, considered that one of the reasons for its unfortunate economic situation was the concession of such vast territories to the "Czecklers." Thirdly, the privileged situation of the latter made them exclusive, a characteristic which has throughout the centuries kept them from mixing with the Rumanian population, or indeed from having any relations with them at all. It is only fair to say that it was impossible for the Rumanian Government to continue to maintain the privileges which these "Czeckler" communities had traditionally enjoyed. But on the other hand, it was difficult to take them away without giving rise to the accusation of a policy of persecution. Such situations demand of governments and more particularly of local authorities an equanimity which it is not always easy to preserve when surrounded by the passions which this kind of question inevitably arouses. It may be said, indeed, that the "Czecklers" would constitute a difficult and delicate minority problem for any state to which their territory might be adjudicated.

The Saxon minority in Transylvania (225,000) [1] originated in colonizations carried out by the kings of Hungary in the middle of the twelfth century. In contrast with the "Czecklers," however, these colonies were not of a military character, their object being to strengthen the ties with those remote territories by means of settlements of compact groups of German nationality. The privileges and concessions which always accompanied these colonizations are still enjoyed. The territory in question is a wealthy region, of which Sibiu is the center or capital. The general appearance of the villages gives evidence of a high level of prosperity and culture; the people have remained relatively isolated from both the Rumanians and the Hungarians. In the last post-war period they protested

[1] See Macartney, *op. cit.*, p. 522.

against certain measures of the Rumanian Government, especially in regard to education; but their attitude was a loyal one, and they were wise enough not to let themselves be carried away by the Hungarian minority nor to emulate its policy of systematic hostility towards the Rumanian Government.

Two other minorities — the Russian in Bessarabia (100,000 to 200,000) [1] and the Bulgarian in North and South Dobruja (some 250,000) [2] complete the groups of those living in Rumania. Both are Slav, and both give proof of the deplorable consequences of a territorially ambitious policy which does not take into account the nature of the population. Recent territorial readjustments have been effected in both cases, and the regions in question have been returned to the states to which they rightly belonged — Bessarabia to the Soviet Union, and the Dobruja to Bulgaria. As regards the latter country, the Rumanian Government made an unfortunate attempt to "denationalize" the Bulgarian peasants, who constituted the large majority and the basis of the population, by means of a kind of forced colonization of Rumanian peasants in the territory. The only result of this was to increase the hostility and annoyance already existing in the Bulgarian population, and to make the exercise of Rumanian authority even more difficult.

5. *Yugoslavia*

The so-called "Macedonian question" was, during the interwar period, the most important and acute of the minority questions with which the Yugoslav Government had to deal. It did not originate in the Peace Treaties of 1919; the territory known to the Yugoslavs as "Southern Serbia" and which the Bulgarians insisted on considering as a part of Macedonia, was adjudicated to Serbia as a result of the Balkan Wars

[1] See Macartney, *op. cit.*, p. 524. [2] *Ibid.*, pp. 524–25.

immediately preceding the war of 1914. The treaty of Neuilly merely rectified the frontier in favor of the new Yugoslavia, a rectification carried out for strategic reasons, and of little territorial importance in relation to the disputed region as a whole. The restrictions in worship and in the use of the mother tongue and, above all, the persecutions and ill-treatment to which the Yugoslav authorities subjected the Macedonian peasants and intellectuals, were the main theme of the innumerable and continual protests and petitions sent to the League of Nations concerning this minority. One of the most characteristic features of the situation, which made it an especially difficult and delicate one, was the intimate connection between this minority question and the political relations of Yugoslavia and Bulgaria. During the whole of the post-war period, with the exception of the last few years, these relations could not have been worse; anyone who had been in touch with the official elements of both countries, without understanding the particular idiosyncrasies and temperament of the Balkan peoples (which are peculiar in a greater or lesser degree to all the inhabitants of the Mediterranean basin), might have thought that they were witnessing the manifestations of a hatred which was deeply rooted in the minds of the people, and which could only be overcome in the course of several generations. The Bulgarian Government stated that one of the main obstacles to the establishment of cordial and neighborly relations with Yugoslavia was the treatment which the latter government meted out to the "Macedonian" or Bulgarian minority. The Yugoslav Government, in its turn, alleged that so long as this minority was an instrument used by Sofia for irredentist ends, it would be impossible to establish the régime stipulated by the Minorities Treaties, since such a régime was, in the opinion of that government, only permissible if a scrupulous loyalty were observed by minorities to the states of which they formed part. What made the

matter more difficult was the fact that both parties were right, although perhaps neither was entirely so.

The Bulgarian Government (with the consent and support of Italy) did everything possible to fan the flames of agitation against the Serbian authorities, this apparently being, in its opinion, one of the most effective methods of preventing the consolidation within the new Yugoslav State of a territory to which Bulgaria had not renounced its claim. In this connection, mention should be made of a body often known as the "Macedonian Revolutionary Organization," [1] which eventually gained considerable power, not only because of the support lent to it by the Bulgarian Government, but also because Italy was interested in furthering its activities, all of them designed to prevent the consolidation of the new Yugoslavia in the south. This body acted publicly through a legal organization, which was responsible for the presentation to the League of Nations of the vast majority of the petitions concerning the Macedonian minority. Its *illegal* activities (attempts of all kinds on life and property in Yugoslav territory) were carried out by clandestine organizations, ruled by an iron discipline, and directed and controlled with great efficiency at that time by one Mihailoff, a legendary and mysterious figure, who was surrounded with an aura of heroism and terror.

To these activities the Yugoslav authorities replied with a policy of persecution, believing that only thus could the "Macedonian" population be released from the influence of these organizations, behind which they perceived, with understandable annoyance, the hands of the Bulgarian and Italian governments. Now, as may be easily realized, not merely did this policy of persecution and terrorization make it impossible for the Yugoslav authorities to counteract Bulgarian activities

[1] Also referred to as the Macedonian National Committee, or the Macedonian Revolutionary Committee. For further details on this organization, see below, p. 68 ff.

effectively, but it actually created conditions in which such activities could be carried on to the best advantage. Moreover, it must not be forgotten that, generally speaking, the question of the treatment of minorities is in the last resort not decided by the central organs of the government, but by local authorities. And there is little occasion for surprise that in the face of action which was often violent and criminal, and in the conviction that such action was promoted, or at least supported and encouraged, by a foreign government, the Yugoslav local authorities — and even the government itself — should not have acted in an entirely dispassionate manner or have judged the situation calmly from the point of view of the real interests of the state. Once again we touch on the human aspect of minority questions, an aspect of very great importance. In the vast majority of cases the problems themselves are intrinsically of limited importance, and are caused by the passions and animosities inseparable from life in towns and villages. Their significance nearly always depends on their number, and this significance can only be appreciated when they are examined as a whole. But it is difficult to make arrangements to insure that such an examination will be made by the officials and local authorities who are frequently called upon to make final decisions.

Apart from the "Macedonian" question, the other two minorities worthy of mention in Yugoslavia were the German (about 575,000) and the Hungarian (little more than 450,000).[1] Although small in numbers, they were of importance for the two following reasons. In the first place, each enjoyed the support of a government interested in keeping alive minority agitation in order to retard the consolidation and unification of the new Serb-Croat-Slovene State. With respect to the Hungarian minority, the Hungarian Government displayed

[1] See Macartney, *op. cit.*, p. 526. Neither the Slovenes nor the Croats were considered as "minorities," but as component elements, with the Serbs, of the Yugoslav "majority" of the state population.

an activity only comparable with that which it showed in the case of its minority in Rumania, to which it offered every kind of assistance. The German Government proceeded with much greater caution and by indirect means. But it was a notorious fact that, while that government betrayed a complete lack of interest in the Germans of Transylvania (Rumania), it lent positive support to the German minority of Yugoslavia. In the second place, both the Hungarian and the German minorities were more culturally and politically developed than the Slav population of the majority.[1] When such a situation occurs, the transition from one régime to another always presents extraordinary difficulties, and it is almost impossible to avoid, over a greater or lesser period of time, those violent fluctuations caused by the abrupt reversal of the situations of majorities and minorities. The case of the German and Hungarian minorities of Yugoslavia is an excellent example of this troublesome phase of the minority problem, a phase which must not be underestimated if any future system of minority protection is to be carried out peacefully and effectively.

6. *Greece*

The Albanian groups of Epirus and Chamuria (regions adjoining the Albanian frontier) and the Macedonian groups in the area adjoining the Bulgarian frontier were, properly speaking, the only two minorities existing within the frontiers of the Greek State. Since the last war, neither has been nearly so important as the Central European minorities. Their claims were limited to educational matters and to the use of the mother tongue in schools and law courts. At no time was their treatment the serious cause of friction between the interested states. And when the situation of the Albanians of Chamuria

[1] This remark applies particularly to the Serbs, who were the dominant element in the Serb-Croat-Slovene combination.

and Epirus seemed to be impaired, it was easy to see that the intervention of the Albanian Government and the devious policy of Italy were the fundamental causes of the agitation.

As far as the Macedonians of the north are concerned, it must be remembered that this minority consisted of those who did not wish to take advantage of the plan for the voluntary interchange of population between Greece and Bulgaria. This is due to its small size and limited interest in political matters, since it was made up of elements which, for one reason or another, were certain of being able to settle down happily with the Greek population and authorities.

There existed in Greece another minority, worthy of mention for its originality and a certain picturesqueness of character: the non-Greek communities of Mount Athos. It is impossible to go into details here concerning the complicated institutions by which these communities became a single political entity, and the intricate measures regulating their functions and relations with the Greek Government and authorities. In the Protection of Minorities Treaty signed by Greece, a special clause was inserted whereby the Greek Government promised "to recognise and maintain the traditional rights and liberties enjoyed by the non-Greek monastic communities of Mount Athos under Article 62 of the Treaty of Berlin of July 13, 1878." A Bulgarian and a Russian convent sent to the League of Nations many petitions denouncing violations of this article; and the study of these petitions and the negotiations to which they gave rise, took up a by no means inconsiderable part of the time of the Section for the Protection of Minorities of the League Secretariat. But the truth is that it was never possible to disentangle the complicated measures regulating the functioning of the authorities of Mount Athos, less still those defining the attributes of the Greek authorities. The application of the Agrarian Reform Law to the land of the non-Greek monasteries gave rise to the

most lively discussion, and it was not easy to justify the exclusion of property belonging to the non-Greek minority monasteries when the law applied to that of the Greek monasteries. Considering the matter now in due perspective, it may be questioned whether it was necessary and wise to include in the Greek Minority Treaty this special clause concerning Mount Athos. In any case, the question had lost its specifically political character, and our chief interest in the Minorities Section of the League was merely to study this very original institution, while I always entertained the hope that one day the necessity would arise of doing so on the spot. But although I discussed matters relating to Mount Athos in Athens more than once, I never succeeded in visiting it, to my very great disappointment.

7. *Albania*

Small groups of Greek population in the southern part of the zone adjoining Greece and certain Slav groups in the eastern mountain zone adjoining Yugoslavia were the only two minorities in Albania. This is one of the cases where it would be of advantage to eliminate the two minorities by a system of interchange of population, similar to that established voluntarily in 1919 between Greece and Bulgaria.

8. *Turkey*

The new Turkish Republic, as its boundaries were established in the Treaty of Lausanne, is of little interest from the point of view of minorities. The important Greek population of Asia Minor (in Smyrna and the surrounding district) largely disappeared as the result of the war with Greece in 1920; many of those who could not embark in Smyrna and other small ports for the Greek coasts were annihilated by the advancing Turkish army. It was this circumstance and the

plight of the Greeks remaining in Turkey which gave rise to the obligatory arrangement for interchange of Greek and Turkish populations, controlled by an international commission under the auspices of the League of Nations. With the elimination of this Greek population, which, by reason of its size and cultural and economic development, would have constituted an important minority, there only remained in Turkey two minority groups of secondary importance: the Greeks of Constantinople and the Armenians. The first were explicitly excluded from the plan of interchange, and in fact, with the exception of certain incidents arising from expropriation measures adopted by the Turkish Government — measures which are usually keenly felt in groups such as these, formed largely of prosperous people — no questions resulting in serious political differences ever arose. The same may be said in the case of the Armenians. The questions placed before the League of Nations by both minorities nearly always concerned protests against economic or fiscal measures adopted by the Turkish Government as a result of the great task of internal renovation and reconstruction in which it was engaged during the period following the last war. These protests did not represent the minority as the victim of political persecution as such, but were rather the means used by certain elements to shield not only themselves but the class to which they belonged against the disagreeable consequences of the measures in question. It can, in fact, be said that as regards these minorities in Turkey, no question of importance was once raised during the whole of the last post-war period.

9. *Austria, Bulgaria, Hungary*

Although these three nations also accepted obligations concerning the protection of minorities similar to those accepted by the countries already mentioned, it was not because they believed that their new frontiers included minorities which de-

manded or justified such an acceptance,[1] but merely for the sake of what might be termed reciprocity. One of the greatest difficulties in the functioning of the system of minority protection was due, as we have seen, to its *exceptional* nature. It constituted an obvious limitation of sovereignty, imposed on a limited number of states, some of which were victor powers. This could not fail to produce a hostile reaction against what, as sovereign states, they considered to be humiliating restriction. Moreover, the principal beneficiaries were to be the German (Austrian), Bulgarian and Hungarian groups of population which were separated from the vanquished states of Austria-Hungary and Bulgaria. It was apparently thought that the imposing of similar limitations on Austria, Hungary and Bulgaria, although their new frontiers could not conceivably justify it, might serve to mollify the other states which were burdened with minority obligations. This, however, was not the case; the arrangement was too artificial and gave satisfaction to none. Then, too, the fact that a state like Italy — whose new frontiers included a German and a Slav minority, important both in size and cultural and economic development — was, by virtue of her status as a "Principal Allied and Associated Power," excepted from a system specially drawn up for such cases, impaired the whole system of minority protection and largely destroyed its effectiveness.

[1] The truth of this statement is by no means diminished by the fact that sporadic petitions were presented to the League of Nations concerning the "old Catholics" of Vienna, the Slovakian groups of the north of Hungary, or certain Vlach groups in the Bulgarian mountains. All of us knew the origin and meaning of these petitions, and they deceived no one.

CHAPTER III

RIGHTS AND DUTIES OF THE MINORITIES

It has already been shown that the assurance and guarantee of a régime of equality between the national minorities and the majority in a state are the objectives of an international system for the protection of minorities. These objectives are not only humanitarian but also and more especially, political; and in order to assist in making a reality of the rule of law in international relations, the system for the protection of minorities cannot be content with lesser objectives, nor can it demand more. If it were content with less it would be ineffective; if it demanded more it would become vexatious. Hence *equality*, with all that it implies, must be the great guiding principle in any attempt to create an international system of minority protection. Let us, therefore, in the light of this principle, examine the twenty years' experience of the system instituted in the Minorities Protection Treaties, signed in 1919 between the Central European and Balkan States and those known at the time as the "Principal Allied and Associated Powers." In these treaties we must distinguish between their *substantive* provisions, i.e., those defining the rights of national minorities, and their *adjective* provisions, i.e., those establishing the mechanism for the international guarantee that such rights shall be enjoyed by the minorities and respected by the majority.

The present chapter attempts to summarize, in relation to the principle of equality, the substantive provisions of these treaties, taking as a guide the distinction, indicated in a previous chapter,[1] between what may be termed the guarantee of negative equality, which protects the minorities from the danger of discriminatory treatment, and that of positive

[1] See above, pp. 22 ff.

equality, which insures to the minorities those conditions required for the preservation and development of everything represented by their national consciousness, and particularly their language.

1. *Protection of Life and Liberty*

Before examining the provisions for guaranteeing equality, however, it is worth while to consider for a moment the only *general* provision which is contained in the Minorities Treaties of 1919, and which, as such, may be looked on as an interesting precedent for any future international "bill of rights" of the human personality. By virtue of this provision the signatory state guaranteed *to all its inhabitants* full protection of life and liberty, and recognized that they were entitled to the free exercise, whether public or private, of all creeds, religions or beliefs whose practices were not inconsistent with public order or public morals. In view of its general character, and the fact that it applied not only to the majority and the minorities but to all the *inhabitants* of the state (that is to say, to foreigners as well), it is not clear why this provision should have figured in the Minorities Treaties. It would have been more logical to have gone one step further than the Berlin Treaty of 1878, and to have given a general value and significance to the principles set forth in the provision mentioned by incorporating it in the League Covenant, instead of merely including it, with but little logical justification, in the Minorities Treaties which apply only to a limited number of countries. Its inclusion in the Covenant rather than in the Minorities Treaties would have been all the more justified by the fact that, from a practical point of view, this provision could never have had any force as regards those not belonging to a minority race, language or religion, since, as will be explained later, the Minorities Treaties were guaranteed by the League of Nations only in so far as they affected members of such a minority.

The provision in question serves to illustrate the danger of intervening in delicate matters without being guided by a clear and well-defined policy; and it also holds a very useful lesson for the future. If it could have been applied literally (which would, in any case, have been impossible), the implication would have been that infringements against life, liberty or freedom of conscience are of international interest only when they affect those belonging to a minority of race, language or religion, while they can be committed with impunity if the victims belong to the majority, or to political, social, or professional minorities. The inclusion of this clause in the Minorities Treaties not only accorded an unjustifiably privileged position to national minorities in the matter of these fundamental rights of the human personality, but also gave rise to a situation as lacking in logical justification as the privilege itself. For by the inclusion of the clause in the treaties, the obligation to respect these essential rights (rights by their very nature of a universal character) was laid down — although, as I have said, entirely without sanction — solely in respect of a limited number of states. There could only be one of two possible explanations for this: either that attacks on life, liberty or freedom of conscience of the inhabitants of states which did not have to accept this obligation (among them all the so-called Great Powers) were considered less important than those which might have been made on the inhabitants of states subject to the obligations of the Minorities Treaties; or else that the authorities of the states placed under the obligation were considered more likely than those of the other states to perpetrate such attacks. In either case the presumption is not exactly flattering.

2. *Equality*

"Negative" equality, that is to say, equality which merely means that the minorities do not receive a worse treatment

than that of the majority, was stipulated in those measures of the Minorities Treaties which guaranteed:

(1) Equality of all nationals of the country before the law.

(2) Equality in the matter of civil and political rights, and of the admission to public posts, functions and honors.

(3) Equality of treatment and security in law and fact.

(4) Equality of all nationals of the country in the matter of establishing, managing and controlling charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language, and to practice their religion freely therein.

(5) Equality in the matter of the employment of any language in private intercourse, in commerce, in religion, in the press or in publications of any kind, or at public meetings.

"Positive" equality, that is to say, equality which guarantees minorities the preservation and development of their national consciousness, was stipulated in two provisions. By virtue of the first, the interested states accepted the obligation to grant nationals speaking a language other than the official one, adequate facilities for the use of their own language, either orally or in writing, before the courts. Under the terms of the second, the states were obliged, as regards public education, in the towns and districts where there was a considerable proportion of citizens speaking a language other than the official language of the state, to insure that in the primary schools [1] instruction should be given to the children of such nationals through the medium of their own language. This provision, however, did not prevent the government concerned from making the teaching of the official language obligatory in such schools.

The Minorities Treaties contained, finally, a clause drawn up in language so confused and sibylline that we were never able to discover its real meaning, nor the value of its practical

[1] The Czechoslovak Treaty does not contain the words "in the primary schools."

application. This clause imposed on signatory states the obligation, in towns and districts where there was a "considerable proportion" of nationals of the country "belonging to racial, religious or linguistic minorities," to assure to those minorities "an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budget, for educational, religious or charitable purposes."

When these provisions are considered as a whole, however, due praise must be given to their authors for having drawn up a clear and systematic codification of those rights whose recognition and respect are an essential condition of the full safeguarding of the principle of "equality," without disturbing in any way the normal functioning of the governments concerned, nor the stabilization and consolidation of new or reconstructed states. The results thus achieved could well be used in any future international organization, and it may therefore be of interest to complete the summarized exposition of these provisions with a few notes on their practical application during the twenty years in which they were in force.

* * *

If I were asked what was the most interesting sphere in which the clause establishing *equality before the law* had been applied, I would reply unhesitatingly, "agrarian reform." This reply might surprise those who are not familiar with the day-to-day work on minority questions which was carried out in Geneva by the League of Nations. But I am sure that my opinion would be shared by all who knew the tremendous amount of time and effort dedicated, by all those Geneva organizations concerned in one way or another with the protection of minorities, to the study of the agrarian reforms made by the Central European and Balkan countries after the

war of 1914–1918. It may be said that agrarian reform constituted a veritable field of experiment for this clause concerning *equality before the law;* and it may perhaps be of interest for specialists in agrarian economy to know that there exists in the archives of the Minorities Section of the League of Nations one of the most complete and authenticated dossiers concerning not only the agrarian reform laws of the Central European and Balkan countries, but also — which is perhaps more important — their execution.

The reason for this is that the agrarian reforms of those countries (among which Poland, Czechoslovakia, Lithuania and Rumania head the list) were submitted to the League of Nations with the allegation that both their text and their method of application made of them national and anti-minority measures rather than economic or social ones; that their object was not so much to reform the economic and social structure of the state as to reduce one or more of the national minorities living therein to economic impotence, to the advantage of the majority; in short, that the text and application of these agrarian reform laws were typical examples of discriminatory legislation against one or more national minorities and were therefore direct violations of the clause of the Minorities Treaties concerning equality before the law.

I must confess that these general allegations on the part of the minorities concerning agrarian reform never impressed me very deeply. Admittedly, it was obvious that in all these countries agrarian reform operated to the detriment of minorities (the Germans in Poland and Lithuania, Germans and Hungarians in Czechoslovakia, Hungarians in Rumania) and in favor of the majority. This, however, was not necessarily the result of a policy of minority persecution on the part of the respective governments (although the latter in certain cases might not have been displeased at the results), but rather of the composition of the population in those territories, where, for historic

reasons which cannot be detailed here, large estates had been concentrated in the hands of "nations" dominant up to the time of the 1919 treaties, while the mass of the peasants consisted of the populations of the dominated "nations" (Czechs, Slovaks, Ruthenians, Rumanians). This parallel between social classes and nationalities, the result of historical circumstances, was the real reason why agrarian reform in this part of Europe, when taken as a whole, appeared — and could hardly fail to appear — to be of a national rather than of a social and economic character. Perhaps it is nearer the truth to say that the great landowners, in representing to the League that the agrarian reform of which they were victims as an anti-minority measure, were attempting to abuse the application of the protection of minorities by using it not in the interests of a national minority, but in those of a social class. If it had been conceded that agrarian reform in Central European countries, since it generally expropriated the holdings of members of national minorities and divided the land among members of the majority, was contrary to the clause of the Minorities Treaties guaranteeing equality before the law, the absurd and inadmissible conclusion would have been reached that all agrarian reform was impossible under the treaties, although in reality there was not the slightest doubt that such reform was one of the keys to the economic and social consolidation of these countries.

This does not mean, of course, that there were not definite cases where minorities succeeded in proving, with respect to these reforms, the existence of genuine violations of the rule of equality before the law; and, with such reservations as the foregoing general considerations required, the League of Nations attempted by every means in its power (though these, alas, were always scanty) to find a satisfactory solution to the problems involved. Considering the matter objectively and as a whole, I feel that the state which carried out agrarian reform

with the greatest justice to its minority was Czechoslovakia. And this in spite of the fact that in that country — more perhaps than in any other — there existed the parallel between nationalities and social classes which seemed inevitably to give rise to anti-minority tendencies. However, it is true that in Czechoslovakia the number of large Czech landlords and of German or Hungarian peasants was proportionately less than that of Polish landowners and German peasants in Poland, or of Rumanian landowners and Hungarian peasants in Rumania.

As a result of the many general accusations, or specific complaints, the application of agrarian reform in Central Europe was studied with the greatest care by the competent organs of the League. The minorities, that is to say, the landowners, presented all their criticisms in innumerable and repeated petitions, supplementary claims, memoranda, etc.; and these criticisms were not limited to the national or minority aspect, but covered economic, social and sometimes purely agricultural matters. The governments, in their observations on these petitions, put forward every possible justification and explanation of the measures adopted by them, not only from the national, but more particularly from the economic, social, and agrarian point of view. To this abundance of material, which by reason of its polemic nature was of exceptional originality and importance, must be added numberless technical, juridical, economic and agricultural reports which the League Secretariat services, or experts appointed *ad hoc*, prepared for the meetings of the Council Committees, or for the Council itself, in order to establish a firm basis for the resolutions adopted.

The questions which were thus the object of examination and resolutions on the part of the League of Nations were most numerous and varied. Some were recorded in the annals of the Council, such as those concerning the German colonists in Poland, on which an "advisory opinion" was requested of the

Permanent Court of International Justice, an opinion which contains some very interesting observations on the correct interpretation of the clause on *equality before the law*. The question raised by the Hungarian Government concerning the expropriation of the land belonging to the Hungarians of Transylvania, who had opted for Hungarian nationality when that province was incorporated under the Treaty of Trianon in the Kingdom of Rumania, was not *technically* submitted to the League as a minority matter, but was closely related to that type of problem. Proof of this is indicated in the fact that, as representative of the Minorities Section of the League Secretariat, I attended the first negotiations to which this thorny question gave rise in 1923, negotiations held in Brussels under the chairmanship of Mr. Adatci, Japanese Ambassador of the day in Belgium, and at which M. Titulesco and Count Czaky represented Rumania and Hungary respectively. These negotiations have remained engraved in my memory, not only because they were the first important ones in which I had the opportunity of collaborating but also because, being fully aware of the points of view of the Rumanian and Hungarian governments, I considered — in opposition to my colleagues and even to the Hungarian plenipotentiary himself — that the compromise formula agreed upon would not be accepted by the latter's government. And, in fact, as soon as Count Czaky informed his government of the result of these negotiations, he was placed in the unpleasant position of seeing the latter refuse to ratify the agreement which had been reached. The question of the Hungarian optants remained the object of continuous discussions, some of them being among the most memorable which took place in the Geneva forum, i.e., those at various consecutive meetings of the Council between two great figures of contemporary international life — M. Titulesco, the mouthpiece of the new Rumania, and Count Apponyi, who embodied, with the maximum authority, the most authentic traditions of

the Hungarian aristocracy. A final solution was eventually reached years later at The Hague in one of the financial adjustments to which the application of the Dawes Plan gave rise.

* *

Complaints of violations of the provisions on the *equality of treatment and security in law and fact* almost invariably concerned measures of violence, repression and terror applied by the authorities against minorities. A distinction must, however, be established between the cases of abuse on the part of local authorities, remedied by the governments with greater or lesser promptness and good-will, and cases of political action decided on, or consented to, by the state authorities.

The first occurred, although not with equal frequency, in all the "minority" countries. Czechoslovakia, Estonia and Latvia undoubtedly had the least number of cases of this kind and were most disposed to deprecate them and to make amends for their consequences. But on the whole, it would not be fair to attribute any great significance to these abuses or local attacks, for considering the tension created in the majority of these populations by the brusque change of positions between dominant and dominated nationalities, it is amazing that the number of local incidents was not greater, and that none of them acquired any real international importance.

In justice to the League, it should be recognized that its mechanism for minorities protection did much in this connection by diverting to itself, so to speak, the greater part of the discontent and irritation which these incidents inevitably produced, and which would otherwise have accumulated and would have created a dangerous situation. An incident of the kind under discussion sets the minority which is the victim of ill-treatment against the authority responsible for such treatment; if, as almost always happens, the minority makes a

claim to the central authority, this exasperates the local authority, and a certain tension between both sides is inevitable. Besides this, the incident will have aroused the *interest* of a state (almost always a neighboring one) whose population is of the same nationality as that of the minority in question, and if in consequence the former makes any representation to the government of the "minority" state, the matter is already well on the way to creating international tension, and perhaps a real conflict. Is it not an excellent thing to have found the means of transforming this mutual hostility — which constitutes such a potential menace — into a feeling of solidarity against a common foe? This is, in effect, what the League of Nations achieved in cases involving the protection of minorities; all the discontent and annoyance were concentrated against the League — on the part of the minority and the neighboring state because they considered its intervention ineffective, and on that of the "minority" state authorities (local and central) because they considered it was interfering in their own internal affairs. And this was not all. The intervention of the League of Nations gave everyone — the minority leaders, the government of the state concerned, the neighboring country, etc., — an excellent opportunity for letting matters slide, under the pretext that the League was there to arrange everything, although this did not necessarily prevent them from subsequently throwing on its shoulders the full weight of their criticisms, disappointments and discontent.

Sufficient justice has not been done to the wide though hidden service which the League of Nations has afforded the cause of peace by diverting to itself the many currents of irritation, ill-will and disappointment which would otherwise have done increasing harm to interstate relations, or would have been the cause of grave disturbances in the future. I must confess that during the years which I spent in the Minorities Section of the League of Nations the one thing that did most

to sustain my morale in the face of the continual criticism and blame which were directed against us, was the fact that, whether such censure was justified or not, this diversion to itself on the part of the League, of the bitterness and hostility existing between the states, represented an appreciable service in the cause of international collaboration in the first difficult period after the last war.

More serious than any cases of local abuses or attacks, however, were those disturbances caused by some political design on the part of the governments. And without any wish to reproach — for I have always been fully aware of the immense internal difficulties of the governments of the minority countries — it seems desirable here to mention the instances which I remember as being the most typical and significant and which hold the most useful lessons for the future.

The first case worthy of mention, and the only one of any permanent character, concerns the population of what was known to the Yugoslav Government as Southern Serbia and of what the Bulgarians considered as that part of Macedonia which was annexed to Yugoslavia. Discounting whatever there might have been of propaganda in the innumerable petitions addressed to the League of Nations concerning methods employed by the Yugoslav authorities against the Macedonian population, there can be no doubt that, in the greater part of the inter-war period, the Yugoslav authorities in question meted out to this population treatment (varying in accordance with the changing political circumstances) which was not entirely compatible with the "equality of treatment" clause. The excuse given for this repressive policy was the "irredentist" attitude of the population, and in particular its connivance in the terrorist and revolutionary activities of the famous Macedonian National Committee.[1] It is not possible to explain here the significance of this organization; the

[1] For previous mention of this organization, see above, p. 50.

rôle that it played in the whole process of independence and liberation of the Slav peoples of the Balkans, and particularly of the Bulgarians, is too great to be summarized in a few sentences. An account of the committee's activities would provide more than enough material for a chapter — and by no means one of the least interesting in modern Balkan history. What is certain is that, during the period between the two wars, this committee had its headquarters in Bulgarian territory; [1] that it could count on the support, or at least the tolerance (perhaps not always conceded with a very good grace) of the Bulgarian Government; and that above all, it could count, in matters both political and material, on the open and determined help of the Italian Government, which used it, so to speak, as an *agent provocateur* with which to prevent the consolidation of the southern part of the new Yugoslav State.

The famous Mihailoff, a legendary figure previously mentioned, who, from his retreat in the Petritch Mountains, directed the Macedonian organization, at times practically dominated Bulgarian politics by his terrorist methods; and his resources were so abundant and effective that for months he was able to maintain a state of terror, by means of attacks of all kinds within the Yugoslav territory. The exasperated authorities retaliated with a campaign of repression against the people, a campaign which merely furthered the ends, not only of Mihailoff and his committee but also of those who financed them, by preventing the internal consolidation of these territories and the peaceful assimilation of their population by the new Yugoslav State.

The League of Nations was thus placed in a particularly difficult situation, when it was found necessary to examine the numerous petitions which were constantly being received from the Macedonian organization. On the one hand, the facts ex-

[1] The Petritch region, on the Greek frontier, was in fact more under the control of this committee than of the Bulgarian authorities.

posed constituted obvious violations of the clause on *equality of treatment and security;* on the other hand, it was notorious that the claims proceeded from a terrorist organization whose aim was manifestly political. Finally, there was the not altogether groundless fear that by making formal representations to the Yugoslav Government on the strength of these petitions, the League would encourage activities whose real object was to maintain a state of agitation and to prevent collaboration and the harmonious and peaceful co-existence of majority and minorities. In this way an exactly opposite result would be produced from that intended when the protection of minorities was entrusted to the League. All this led to a state of indecision bordering on paralysis; the League confined itself to bringing a certain limited pressure to bear on the Yugoslav Government, making worthy but almost unavailing efforts to convince that government that to answer the Macedonian Committee's campaign of terror *in kind* would only further the latter's ends. I have given these details here because one of the greatest criticisms of the League in questions of minorities protection has concerned its passivity toward the "atrocities" committed in Macedonia by the Yugoslavs. I hope that these details, which at the time could not be revealed to our critics, will explain the reticence and reserve which must then, not surprisingly, have seemed to them inexplicable.

The second case deserving mention concerns the Hungarian minority of Transylvania. As is well known, this province of the former Kingdom of Hungary was included by the Treaty of Trianon in the new "Greater" Rumania, an inclusion which, incidentally, gave rise to the principal claims of Hungarian revisionism in the inter-war period. In general terms, it may be said that the population of Transylvania was made up of a large number of Rumanian peasants, and of the Hungarian urban bourgeoisie, who formed the ruling class. The transition from the old to the new régime violently shook the social and

political structure in this territory, particularly since, in consequence of political motives and the pressure exercised by the Hungarian Government itself on the Hungarian population, the safety-valve provided by the clauses concerning the right of opting never functioned properly in this case. Everything concerning the Hungarian minority of Transylvania during the post-war period must be judged in the light of the following fundamental considerations: (*a*) the tremendous inequality existing between the primitive and miserable Rumanian peasants and the rich and cultivated Hungarian bourgeoisie, an inequality accentuated by the socially and economically feudal régime still in force in those regions; (*b*) the support given by the Hungarian Government to this population in its resistance against everything which the incorporation of Transylvania into "Greater" Rumania represented; (*c*) the intractable political attitude of the Hungarian minority, even when it was disguised by an appearance of collaboration with the Rumanian Government — an intractability caused by the Hungarian minority's conviction of its superiority over the dominant Rumanian peoples, and constantly encouraged by the Hungarian Government, whose plan was to prevent by every possible means the internal consolidation of the new Rumanian State; (*d*) the profound annoyance, at times exasperation, which this concatenation of circumstances caused among the Rumanians — not only the Rumanians of Transylvania, but also those who in Bucharest were faced with the immense task of unifying and consolidating the state in the shortest possible time.

Rumanian policy vis-à-vis the Hungarian minority was invariably dominated by these factors, and if they are borne in mind it is possible to find, if not a justification, at least a certain explanation of the most culpable methods of repression — methods constituting obvious violations of the clause on *equality of treatment and security in law and fact* contained in the Minorities Treaties. It is true that in Transylvania a policy

of repression and terror was carried out only in the first months of the post-war period, when the atmosphere, particularly in that part of Europe, was still heavy with the psychosis of war. This fact, however, does not excuse those charged with guiding the ship of state through such stormy seas for their obtuseness in applying such methods. As in the case of Macedonia, it may be said not only that the methods in question involved cruelty and suffering to innocent people, but that actually they contributed much toward achieving the objective of the agitators and of those who, on the other side of the frontier, were providing them with the necessary resources, i.e., the prevention of the internal consolidation of the state.

The "punitive expeditions" carried out by the Polish Government in 1930 against the Ukrainian population of Eastern Galicia are another notable instance of the application of violent and terrorist methods for the purpose of subduing a minority. This case is completely different in character from the others which I have just quoted. The Ukrainian population of Galicia never felt themselves bound by national ties to the Polish nation and considered the Poles, just as before the war they had considered the Austrians, as foreign rulers. In order to build a solid economic foundation for their cultural and artistic activities, with which to preserve the national Ukrainian personality, this Ukrainian population concentrated all their efforts on the organization of a powerful and disciplined network of cooperative societies. This vast cooperative organization of a specifically economic character could hardly be attacked and destroyed under the pretext of irredentism. Then the very strange régime which at the time was in force in Poland, and which was known as "the régime of Colonels," decided to set aside all legal scruples and adopt a policy of chastisement. The question was examined carefully by the League of Nations and was even on occasions given the attention reserved in general for questions of high political impor-

tance. This was undoubtedly due, in the main, to the special interest displayed in the matter by the British Government, as represented by its Foreign Minister, Sir Austen Chamberlain, an interest which was either the cause or the effect (I cannot say which) of that shown by public opinion and the British press. Unfortunately, the skill of French diplomacy in throwing cold water on the flames of British indignation prevented League intervention from being as effective as the gravity of the events demanded.

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Just as agrarian reform profoundly affected the *equality before the law* clause, so the problem of schools and the educational régime was the dominant factor in connection with the Minorities Treaties provision on "equal right" of the minorities "to establish, manage and control at their own expense charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein." It may well be said that the innumerable questions to which the practical application of this clause in the treaties gave rise during the last post-war period centered almost exclusively around the establishment, preservation and functioning of private minority schools. There is, however, no complete parallel with agrarian reform, since the importance of the latter in relation to minority questions was fortuitous and due to a coincidence as regards the identity of the division into nationalities with the cleavage of social classes, while that of educational questions was based on the most substantial and permanent of the factors which characterize and define a national minority. That is to say, it may well be that agrarian reform will not again hold any special interest in relation to national minorities, or that such interest will be confined to specific countries or regions in which a parallel between nationalities and social

classes may exist. This cannot be said of the school problem. Where there are national minorities, educational matters — by their very nature — awaken an especial interest. It might almost be said that this interest and that created by the use of a minority language (often both appear to be one and the same) constitute the most definite evidence of the existence of a national minority.

The impression left in my mind by the innumerable educational questions[1] placed before the League of Nations by the minorities of all the states which had signed minority treaties is that the number of cases of violation of the equality principle in the texts of laws or decrees was insignificant compared with that of cases of difficulties or abuses, real or imagined, in the practical application of that principle.

Among the cases dealing with the text of a legal measure, that concerning the resolution adopted by the Albanian National Assembly to suppress all private schools is worthy of mention. The question of the compatibility of this measure with that contained in Article 5, paragraph 1, of the Albanian Declaration on the protection of minorities, which guarantees to minorities "an equal right to maintain, manage and control at their own expense . . . schools and other educational establishments," was submitted to the Permanent Court of International Justice for an advisory opinion. The subject, in spite of its limited political interest, thus became invested with considerable importance. The Court deemed the two measures to be incompatible, basing its opinion partly on a somewhat forced interpretation of the text of the declaration, but mainly on the consideration that if minorities were refused the right to establish and control their own schools, the whole purpose of minority protection — i.e., the guarantee to a minority of respect for and the free development of its national consciousness and culture — would be thwarted. This purpose, which

[1] I am referring here only to those concerning private schools.

was in fact the essence of equality, called in specific cases for a privileged treatment of minorities. A completely contrary opinion, in favor of compatibility, was held by Sir Cecil Hurst, the English judge, Mr. Negulesco, the Rumanian judge, and Count Rostworowski, the Polish judge, who all maintained that the text of the declaration could only be interpreted in the sense that minorities, in the matter of private schools, could not demand more than was conceded to, or recognized in respect of, the majority. This divergence of views in the Court considerably reduced the moral weight of its "opinion," particularly as one of those holding the dissident view was — as has been said — Sir Cecil Hurst, who cannot have been influenced by political motives (as his Polish and Rumanian colleagues might conceivably have been) in his desire to limit as far as possible the restrictive action of the clause on those governments bound by "minority" obligations.

Legislation concerning educational matters and the administrative measures laid down for its execution have for years been the object of careful and detailed examination by the Minorities Section of the League of Nations, for the purpose of determining how far the continuous complaints and accusations of the minorities could be considered justified, and whether or not the explanations put forward by the governments were satisfactory. The information thus amassed is of great importance in both quantity and quality, and it would be absurd to build up a new system for the international protection of national minorities without taking advantage of all the lessons and experience which it embodies. These useful data include not only the petitions and observations (sometimes extraordinarily detailed) of the governments filed in the League archives, but also notes of the studies made in the light of this material by the various sections of the Secretariat, often in collaboration with individual experts or groups of experts on special subjects.

I have already said that in this field the matter of the practical application of the laws and complementary orders was far more important than the examination of their texts. It was for this reason that there developed in the sphere of education one of the most interesting phases of the League activities for the protection of minorities.[1] I refer to the visits (usually made by the Director, or one of the senior officials of the Minorities Section) to the territories and localities concerned. In my capacity, first as official in this Section, and later as its Director, I had the opportunity to carry out many missions of this kind in every country which had signed the Minorities Treaties; and in addition to conversations and negotiations with government representatives in those countries regarding the best way of resolving the problems with which the League was dealing, my work usually consisted of extensive journeys through the minority regions for the purpose of visiting minority schools. In this way I traversed more than once the whole of Rumanian Transylvania, the "Corridor" and Polish Upper Silesia, the Sudeten territory and Sub-Carpathian Russia in Czechoslovakia, and the Yugoslav portion of the Banat. After each visit a detailed report was drawn up of everything which had been seen and heard and of the conversations and negotiations which took place; and, generally speaking, conclusions were drawn and constructive proposals put forward. These reports were always confidential, and were given — and then solely in certain cases — to members of a special committee; in general they were considered as the private material of the Secretariat and were destined for its exclusive use. While reserving for a later page their more general consideration, I feel that I must emphasize here the exceptional documentary importance of these reports, in which everything learned from direct contact with minority schools,

[1] These activities are discussed and analyzed in the following chapter.

one of the most important factors in the sphere of national minorities, was faithfully reflected.[1]

The vast majority of the petitions concerning private schools sent in to the League of Nations dealt with questions which grew out of the exercise of state control over private education, a control sanctioned under even the most liberal and tolerant systems of legislation. Only a very superficial administrative experience is needed to realize that the exercise of this control was necessarily a fertile source of conflict between governments and minorities. The temptation was strong (and not all the governments of minority states could resist it) to use this lever of state control in order to place obstacles in the way of the development, and even of the existence, of minority private schools, without actually violating the principle of "equality." It offered a very tempting means of limiting, and even of gradually suppressing, the influence of that private education maintained and controlled by the minorities themselves, whether such influence was the result of a preexisting situation and local traditions (as in the case of the "domanial" — confessional — schools of Transylvania) or of action taken by the minority as a method of defense, or attack, against the state — as in the typical case of the network of schools created in Poland, and more particularly in Upper Silesia, by the *Deutscher Volksbund*, an organization which the Polish Government considered (not without cause) as closely linked with the German Government. It is only fair to remember that, conversely, the exercise of state control on private schools, even when there was absolutely no anti-minority feeling, often gave rise on the part of the minorities to imagined grievances which, when skilfully put together, made a "case" for submission to the League, and, for the in-

[1] I know that there has been considerable controversy over the positive importance of these visits; this will be discussed in the following chapter when this method of minority protection is examined in general.

terested government, meant political agitation, both internal and external, expenses, administrative burdens, the damaging of its international prestige, etc.

The Minorities Treaties were carefully drafted with a view to safeguarding the rights of minorities to use their own language freely in their own schools. But they were not concerned (nor probably could they have been) with something which is next in importance to language in making the minority school into an instrument for the preservation and development of national culture and minority consciousness — the school programme and curriculum, over which governments have always claimed the right to exercise a wide and strict control. This claim was particularly justified in countries with strong and numerous minorities, but it is easy to see that by skilfully exercising such control, and without in any way flouting the measures of the Minorities Treaties, it was possible to deprive the minority schools of a good deal of their value as organs of minority culture. It was most important to the minorities to have their own schools where lessons could be taught in their own languages — German, Hungarian, Ukrainian, etc. But although this was considerable, the minorities wanted more. The underlying motive of the complaints and petitions was to obtain an educational organization which would make it possible for the minorities to teach not only in their own language but in the form and spirit which they considered appropriate to their culture and national consciousness. Unfortunately the conflict between government control and the aspirations of minorities was as inevitable as it was difficult to resolve. It is easily understandable, for instance, that neither the Hungarians of Rumania nor the Germans of Czechoslovakia and Poland could be satisfied with teaching in their own schools — even though in their own language — the subjects of history, geography, literature, etc., in accordance with the programmes, plans, and texts arranged by the Ru-

manian, Czechoslovak or Polish ministries of education for the private schools of the majority population in their respective states. But when one remembers the circumstances which these governments had to face, one cannot but sympathize with their firm refusal to hand over to the minorities matters of such incalculable importance for the future of their peoples as education and schools — particularly since, in certain cases (the most typical being undoubtedly that of the *Deutscher Volksbund* in Poland, and to a lesser, though very appreciable degree, that of the Hungarian minority of Transylvania), the governments in question were convinced that if they abandoned control of the private minority schools, such control would be seized not by the minorities concerned in each instance but, through the latter, by the government of the state whose population was of the same nationality as the minority. In other words, the difficulty of a situation created by the conflict of two interests — state and minority, both legitimate in the eyes of an impartial observer — was increased by the suspicions and mistrust caused by the obscure and equivocal relations uniting the minority, in certain cases, with the government of a bordering state. These circumstances gave rise to a policy of temporizing on the part of the League of Nations, the real object of which was not so much to discover a solution for an impossible situation as to prevent it from growing worse and causing international controversies. I am sure that all of us who participated in this policy realized full well that our mission was a purely negative one, for the most that we could do was to prevent the continually threatened rupture; it was our thankless task to try to resolve daily conflicts by means of pressure and representations which left everyone discontented. This is not the time to decide whether any other policy could have been followed, nor is it my purpose to offer an opinion on the matter. But in any case, when judgment on it is finally passed, the circumstances which I have

mentioned, and which were its determining causes, should be borne in mind.

Before ending these remarks on private minority schools, I should like to mention the "domanial" (confessional) schools of Transylvania, as an example of the unexpected complications to which the practical application of apparently clear and simple precepts may give rise. In virtue of a system consecrated by a long historic tradition, primary and secondary education was, in fact, a monopoly of the churches, which had at their disposal a wide educational network and in particular a number of secondary schools, some of which were splendidly located and generously equipped. These schools, in which the youth of the middle classes and the aristocracy were educated, depended on the churches (chiefly Catholic and Reformed Protestant), and were subjected to their educational authorities; and, until the transfer of Transylvania to Rumanian sovereignty, state control over them was little more than a formality. The chief characteristic of the régime of these schools was that they enjoyed what is known as the right to "publicity," that is to say, the right to grant state-recognized degrees and diplomas.

When in 1919 Transylvania was incorporated in the new "Greater" Rumania, the application of the Minorities Treaties created a crisis in this strongly established educational régime, a régime used for centuries by Hungary as an instrument for forming and influencing the ruling class of Transylvania. These educational institutions had been traditionally the pillars of Hungarian domination, and their members still looked on the Rumanian elements of the population with a mixture of lofty contempt and pitying protection worthy of feudal times. The establishment by the Rumanian authorities of an effective control over their arrangements and activities could not but create disturbance and unrest. The exercise of this control through the introduction of plans, texts and pro-

grammes was the cause of a long struggle, whose fortunes varied in accordance with the relations between Bucharest and Budapest, but which never ceased to be one of the most serious obstacles to harmonious collaboration between the Hungarian population of Transylvania and the new state.

It was soon obvious that this prolonged struggle centered around the so-called right of "publicity." For the minority the preservation of this right meant the preservation of what they considered the organ of their cultural life and the guarantee of their national consciousness. On the other hand, nothing in the Minorities Treaties obliged the Rumanian State to maintain this "publicity" right, and the advantages which it provided for the Hungarian minority in comparison with the Rumanian schools made it difficult to find reasons to persuade the Rumanians to recognize and sanction it.

I cite this case as being one of the most typical of those concerning minority questions with which we had to deal in Geneva: on the one hand, a minority claim, justifiable and reasonable in principle, although weakened in fact by the doubtful attitude of the minority towards the new state; and on the other, resistance to that claim on the part of the state, which the attitude of the minority rendered excusable, and which was justified to some extent by the absence of any contractual obligation. When we attempted in a friendly manner to extract some concession from the government, nothing was easier for the latter than to justify its refusal on the grounds not only of its being under no treaty obligation but also of the risk involved by the uncertain attitude of the minority. And if we tried to convince the minority of the necessity and desirability of limiting their demands and collaborating loyally with their new state, they cited the intolerant attitude of the government as the cause of their unhappy situation.

It cannot be said with any certainty that the interminable negotiations and conversations in Bucharest and Geneva over

this question of the Hungarian confessional schools of Transylvania, nor the frequent visits paid to these schools, to the local authorities, etc., helped very much to improve in a concrete way the condition of the minority. But the unremitting activities of the League of Nations certainly helped to make it possible for the crisis, and the extensive but inevitable changes in the situation, to take place without any violent conflict. By giving everybody — government, minorities and neutrals — the chance of blaming the League of Nations for what, according to the varying points of view, were the evil aspects of that situation, it was possible to prevent a great current of general discontent and recrimination from flowing between governments and minorities, and between the governments themselves, and to divert it into channels where it could not endanger international relations. And, as has been intimated above, such a statement as this can in general be applied to all the activities of the League of Nations in the sphere of minority protection.

3. *Positive Equality*

The Minorities Treaties contained two general clauses which insured (so far as was considered possible by those who drafted them) the "positive" equality of the minorities in respect of the majority; that is to say, clauses which were not confined to sheltering the minorities from all threat of discriminatory treatment on the part of the authorities, but which created in their favor definite "privileges" without which the minorities could not preserve and develop their national culture and consciousness under conditions *equal* in fact to those enjoyed by the majority.

In my opinion the clause concerning "public" minority schools is of the greater practical importance. Although it has been cited already, it may be desirable to reproduce it here textually as it appears in the Minorities Treaties of 1919:

Poland[1] will provide in the public educational system in towns and districts in which a considerable proportion of Polish nationals of other than Polish speech are residents adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Polish nationals through the medium of their own language. This provision shall not prevent the Polish Government from making the teaching of the Polish language obligatory in the said schools.

The vagueness of the terms, "considerable proportion" and "adequate facilities," greatly limited the practical value of the clause. As regards the former term, Czechoslovak legislation assumed that it denoted twenty-five per cent of the population, and this figure was taken as a general standard. But the fixing of a figure did not go far toward solving the problem, particularly where non-urban administrative districts were concerned. In order to calculate this proportion, should the municipality, the province, or the region be taken as a basis? Under the provisions of the treaties, any one of these would be possible, but that very fact may signify that the guarantee contained in the clause has very little meaning. This was particularly the case outside the well-defined urban centers, where nothing could prevent the governments from dividing the territory administratively so that only in a minimum number of districts, or perhaps in none, would there be a twenty-five per cent proportion of the minority population.

The fact is that this clause of the Minorities Treaties awakened small interest in the minorities; far less, indeed, than its terms might have led one to suppose. The minorities showed a much livelier interest in everything concerning private schools

[1] The text of the Polish Treaty served as a basis and a model for that of the other Minorities Treaties. This clause is reproduced textually in the treaties with Rumania, Yugoslavia, Greece and Czechoslovakia (with the important omission in the last named of the reference to "primary schools"), in articles concerning the protection of minorities, in the Peace Treaties with Austria, Bulgaria, Hungary and Turkey, and in the declarations formulated before the Council of the League of Nations in connection with the protection of minorities by the governments of Albania and Lithuania.

— an attitude which is entirely understandable if one bears in mind that the Germans and Hungarians (who were the ones chiefly concerned with controlling the minority movements after the last war) had at their disposal abundant means with which to "establish, manage and control" their own schools, and in these schools, however great the authority of the state, they could — especially from the political point of view — better satisfy the demands of their national cultures than in the state elementary schools. For contrary reasons, the states were generally more willing to be generous in the application of the clause concerning public elementary schools, than to lessen the severity of their control over private ones. A curious situation often arose in which states countered minority protests against restrictions on these private establishments with impressive reports on the facilities granted for the creation of "minority" public schools.

* * *

The other stipulation of the Minorities Treaties regarding "positive" equality was that the government should accept the obligation to give adequate facilities to those nationals speaking a language other than the official one, for the use of that language before the courts. These facilities generally consisted (depending on the density of the minority population in each judicial district) either in the appointment of judges who had learned the language of the minority, or more usually in the establishment of interpreting services, of a greater or lesser degree of perfection, in the respective courts.

In spite of the positive importance of this guarantee to the minorities, their interest in it was not very great. On the other hand, signs of irritation at the absence of any similar guarantee in the matter of public administration were frequently observed. In point of fact the number of citizens appearing before a law court is, in proportion to the population,

very small, and such an appearance is not usually a frequent event in a man's life. It is rare, however, to find a citizen who has not come into contact with public administration bodies, whether central or local. From a practical point of view, there can therefore be no doubt that the guarantee concerning the use of minority languages in the field of administration was far more important than that concerning its use in the courts; and in future it will be necessary to determine whether (in spite of the practical difficulties involved) the régime applicable to minority languages should not be extended to that field.

A further reason why the minorities showed such scanty interest in this guarantee was its limited practical importance from another standpoint. In the years immediately succeeding the establishment of the new régimes within the post-war frontiers, all the cultured elements of the population who had risen to a dominant position perfectly understood the language of the population which up to then had been part of the majority, but which the régime had converted into a minority. The cultured Czechs and Poles, for instance (including, of course, the new judges in Czechoslovakia and Poland), had a perfect knowledge of German; the cultured Rumanians in Transylvania spoke Hungarian with a like facility; and a comparable situation existed in other areas where the new minorities had previously been part of the majority. This meant that actually language facilities in both the court and the administrative fields mentioned above were adequate. And if matters had been allowed to take the course which was at the time considered normal, the question of the use of the minority language in the courts would not at this stage have been of any great importance, because the new generation of citizens belonging to national minorities would have had sufficient knowledge of the official language of their new state; a situation not only compatible with absolute respect for their culture and national consciousness but also essential if there is to

be collaboration and mutual trust between the state and national minorities.

In order to avoid the charge of negligence, I must not fail to cite certain special measures laid down in various treaties and declarations in connection with specific minorities. The Minorities Treaties with Greece and Rumania and the declaration of Lithuania referred especially to the Jewish minority. The Greek Treaty also contained special clauses relating to Mount Athos, as we have seen, as well as to the Vlachs of Pindus. The Moslems were specifically mentioned in the treaties with Greece and Yugoslavia and in the Albanian declaration. Lastly, I would refer to two cases in which the concession of an autonomous régime was stipulated for minority groups: that of the "Czecklers" of Transylvania in the Rumanian Treaty and that of Sub-Carpathian Russia in the Czechoslovak Treaty.

The failure, whole or in part, to apply some of these measures, gave rise to petitions addressed to the League of Nations, among which those concerning Mount Athos and Sub-Carpathian Russia were the most important.

Looking at the matter quite impartially, I must admit that I have every sympathy with the attitude concerning these two questions adopted by the Greek and Czechoslovak governments respectively. It was neither reasonable nor practicable to demand of the Greek Government a rigorous respect for the traditional rights and liberties which, as a result of the Treaty of Berlin, were enjoyed by the non-Greek monastic communities of Mount Athos; or to require of the Czechoslovak Government the *immediate* concession of an autonomous régime to Sub-Carpathian Russia. In the first case it was in reality impossible for the Greek Government to respect those privileges after the Greek defeat by Turkey; and the consequent necessity of welcoming and rapidly absorbing in their economy 500,000 Greeks of Asia Minor who suddenly

appeared at its gates, forced that government to carry out a radical agrarian reform and to impose on the entire nation sacrifices of every kind which have rarely been equaled in history.

As regards Sub-Carpathian Russia, I have little to add to what has been said in Chapter II; if one realizes the deplorable state of backwardness of the Ruthenian peasants, in contrast with the cultural development and economic prosperity of the Hungarian bourgeoisie inhabiting the cities of the plains, it is easy to understand that the only results of granting autonomy to that territory would have been the restoration of the rule of the Hungarian noble and landlord, who could thus have made it impossible for the new Czechoslovak State to achieve internal consolidation. This does not mean that I approve the incorporation of this territory within the Czechoslovak Republic, an operation whose only *raison d'être* was to create a common frontier between the latter and the new "Greater" Rumania, thus facilitating the development of what was then the beginning of the "Little Entente." On the contrary, I feel that the two limbs cut off from the trunk of the Ukrainian nation and handed to Poland and Czechoslovakia, respectively, should be returned and included in the Ukrainian Republic within the Soviet Union. I am none the less conscious, however, of the absurdity of creating a new state and then imposing on it an obligation whose fulfillment would create a real obstacle to its internal consolidation. The Czechoslovak Government continually put forward considerations of this kind when pressure was brought to bear on it to fulfill the obligation contracted in the treaty; and I must confess that I always found these considerations of great weight, although I never ceased to deplore the circumstances which placed both the Czechoslovak Government and the League of Nations in a false and equivocal position. No doubt the visit which, on the invitation of the Czechoslovak Government, I made to Sub-Carpathian Russia in the spring of 1923 helped to form this

opinion. Accompanied by Mr. Neças, I made a two weeks' tour of all the towns and a good many of the villages of that marvelous country. I was deeply impressed on this visit, not only by the magnificent scenery of the Carpathians, and the picturesque and traditional qualities which characterize the nature of its peasant and mountain peoples, but also by the state of misery and backwardness in which the peoples lived. If the intention of the government in issuing its invitation was to convince me of the impossibility of granting this territory immediate autonomy, I may say that it fully achieved its object. There was no need to have recourse to the methods of deception which are sometimes employed on such visits in order to produce the desired impression.[1]

* * *

The desirability, perhaps even the necessity, of imposing on national minorities a legal obligation of loyalty towards the state of which they form a part, has been one of the subjects with respect to which states under the contractual obligations concerning their minorities have most persistently exercised political pressure. This is undoubtedly one of the most delicate and dangerous aspects of the minority question, and time and space prevent my doing more than noting some of the difficulties to which it gave rise in the last post-war period.

After considerable effort, and by no means easy negotiations, the following two resolutions were adopted in 1922 during its third session by the League of Nations Assembly:

While the Assembly recognises the primary right of the Minorities to be protected by the League from oppression, it also emphasises

[1] Without attempting comparisons with my experience on other missions of that nature, an experience gained over a period of fifteen years in the service of the League of Nations, I may properly emphasize here the correct attitude maintained, during my visit, by the Czechoslovak Government, which confined itself to granting me facilities for seeing everything possible of the country in the best possible way.

the duty incumbent upon persons belonging to racial, religious or linguistic minorities to cooperate as loyal fellow-citizens with the nations to which they now belong.

. . . . .

The Secretariat of the League, which has the duty of collecting information concerning the manner in which the Minorities Treaties are carried out, should not only assist the Council in the study of complaints concerning infractions of these Treaties, but should also assist the Council in ascertaining in what manner the persons belonging to racial, linguistic or religious minorities fulfill their duties towards their States. The information thus collected might be placed at the disposal of the States Members of the League of Nations if they so desire.[1]

I have always been astonished at the small advantage to which these resolutions have been turned by the governments of the "minority" countries. Properly handled, they could have served to counteract effectively some of the political pressure and propaganda used by the minorities to arouse neutral opinion against those governments, particularly since the attitude and conduct of certain minorities toward the new states of which they were a part seemed to impartial observers to leave much to be desired. There can be no doubt that more political and propaganda activity by the states in rejoinder to that of the minorities would have done much to give a better equilibrium to the whole Geneva system of minority protection.

It is easy, however, for the most superficial observer to realize why such action was not taken by the states, and why the two above-mentioned Assembly resolutions became dead letters from the very moment of their adoption. The competent organs of the League of Nations, particularly the Minorities Section of the Secretariat, were always reluctant to favor any movement which might tend to show up and exploit the lack of loyalty to their states, in specific cases, of certain minorities.

[1] League of Nations, *Official Journal*, Special Supplement No. 9 (October, 1922), p. 35.

The reasons for this were diverse and, in my opinion, well founded. No one with a minimum of political experience can seriously believe that the "positive" loyalty of a minority to its new state can be imposed by law, by treaty or by the resolution of an international assembly. Loyalty in that sense cannot be reasonably demanded as a condition under which minorities in general are to receive just and equitable treatment from the authorities of their states, and this statement applies specifically, as regards the last post-war period, to minority groups of the states fulfilling the obligations contracted in the Minorities Treaties. Such loyalty, far from being a condition for the fulfillment of their minority obligations on the part of governments, must be considered rather as the first and most important result of the performance of those obligations. It would therefore have been unjust and misleading to have taken account only of the more or less acknowledged lack of loyalty on the part of a particular minority, without indicating at the same time the treatment which such minority might have received from the authorities of the country. Only when the state is blameless in the matter of its minority obligations, can the disloyalty of minorities be taken into consideration as an important factor. But this principle cannot be applied in reverse, so to speak. The protection of minorities has a certain analogy with what might be called political or mass pedagogy, and to demand "positive" loyalty as a condition for the fair and reasonable treatment of the minority, is rather like demanding that children, before being admitted into a school, should possess the type of education and the character development which they are sent there to acquire.

What may reasonably be demanded of a minority from the very moment of its incorporation within the new state, and as a condition of its enjoyment of a régime of international protection, is what might be called "negative" loyalty; that is to

say, abstention from all hostile activity against the state (though not, of course, from opposition and criticism of the government of the day, the right to which the minorities must be able to exercise on equal terms with the majority), and from all participation in clandestine activities against state security, particularly if these are carried on in collaboration with foreign political elements or governments. But such requirements scarcely need specifying, for activities of that nature are normally designated as criminal in the penal codes of all civilized countries and their prohibition in the case of the minorities results automatically from the strict application of the principle of *equality before the law.*

CHAPTER IV

THE LEAGUE OF NATIONS AND NATIONAL MINORITIES

The Peace Treaties signed at the end of the war of 1914–1918 included, among many other matters, provisions concerning protection of minorities by the League of Nations. Something has already been said in earlier chapters of the motives and nature of the minorities system based on the provisions in those treaties. It is now my intention to explain it in more detail, showing how it worked in practice and what its results were. For this purpose I shall give not only the text of the provisions but also an account of my own personal experience during the twelve years which I dedicated to its practical application, and during which we were faced with continual difficulties in our endeavor to achieve the maximum efficacy within a framework of equity and justice.

Contrary to what is widely believed, the Covenant contains no mention either of the national minorities or their protection by the League of Nations. This was doubtless due to the special and limited character which the protection of minorities assumed from the very first. It was, in fact, impossible to include in the Covenant measures applying to only a limited number of states. In order, therefore, that the League of Nations should be entrusted with this mission of "protecting" the minorities, the following procedure was adopted:

In the Peace Treaties of Versailles, St. Germain, Trianon and Neuilly, a clause was inserted (that contained in Article 93 of the Treaty of Versailles serving as a model for the rest) by which Poland (or Czechoslovakia, Rumania, Yugoslavia, or Greece) "accepts and agrees to embody in a Treaty with the Principal Allied and Associated Powers such provisions as

may be deemed necessary by the said Powers to protect the interests of inhabitants of Poland [or Czechoslovakia, etc.] who differ from the majority of the population in race, language, or religion."

On the basis of this clause, which was the origin of the whole system of minority protection, the five special treaties of minority protection signed by Poland, Czechoslovakia, Rumania, Yugoslavia and Greece, respectively, on the one hand, and the "Principal Allied and Associated Powers" on the other, were drawn up at the Peace Conference. Besides this, as a result of a desire to insure a well-balanced system, a special chapter concerning minority protection was inserted in the Peace Treaties of St. Germain, Trianon and Neuilly, the contents of which were more or less identical with those of the aforementioned special treaties, and by virtue of which the protection of minorities in the three defeated signatory states — Austria, Hungary and Bulgaria — was established. By a similar procedure, i.e., the inclusion of a special chapter in the Peace Treaty of Lausanne, the protection of minorities in Turkey was also instituted. Later, through the efforts of the League of Nations the protection of minorities was established in Albania, Finland (in respect of the Aaland Islands), Estonia, Lithuania and Latvia, by means of "declarations" which were made to the Council and which the latter placed on record. And in order to complete the picture of "minority" obligations laid down at the end of the last war, it only remains to mention Article 11 of the Convention concerning the Territory of Memel, which stipulated the application to that territory of the Lithuanian declaration for the protection of minorities (a stipulation supplemented by Article 27 of the Statute of the Territory of Memel, declaring German and Lithuanian to be the official languages); and the third part of the German-Polish Convention concerning Upper Silesia, of May 15, 1922, which contains (for reasons to be discussed later) the most

elaborate and detailed system of all those established for the protection of national minorities.[1]

1. *Guarantee Clause*

The five special Minorities Treaties, the four special chapters contained in the Peace Treaties of St. Germain, Trianon, Neuilly and Lausanne, and the Albanian and Lithuanian declarations, all included, apart from the "substantive" measures defining the rights of the minorities (see above, Chapter III) a provision known in Geneva as the "guarantee clause," whose terms, identical in each case, were as follows:[2]

> Poland [or Rumania, etc.] agrees that the stipulations in the foregoing Articles, so far as they affect persons belonging to racial, religious or linguistic minorities, constitute obligations of international concern and shall be placed under the guarantee of the League of Nations.They shall not be modified without the assent of a majority of the Council of the League of Nations. The United States, the British Empire, France, Italy and Japan hereby agree not to withhold their assent from any modification in these Articles which is in due form assented to by a majority of the Council of the League of Nations.
>
> Poland agrees that any Member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction, or any danger of infraction, of any of these obligations, and that the Council may thereupon take such action and give such direction as it may deem proper and effective in the circumstances.

[1] The interested reader is referred to a volume published by the League of Nations containing a complete collection of all these texts, with the dates on which they were signed, put into force, etc., *Protection of Linguistic, Racial and Religious Minorities by the League of Nations. Provisions contained in the Various International Instruments at Present in Force.* Geneva, August, 1927 (1927.I.B.2).

[2] As the "guarantee clause" was the same in all of the documents above mentioned, it applied equally to the following countries: Albania, Greece, Poland, Rumania, Czechoslovakia, Yugoslavia, Austria, Hungary, Bulgaria and Turkey. In the declarations of Estonia and Latvia, the terms of this clause were different, though in practice the result was the same. The case of Finland was a special one, and the mission of the League, apart from "seeing that the guarantees are duly observed," was confined to examining any complaints or claims of the Aaland Landsting transmitted by the Finnish Government. For Upper Silesia, see below, Chapter V.

Poland further agrees that any difference of opinion as to questions of law or fact arising out of these Articles between the Polish Government and any one of the Principal Allied and Associated Powers or any other Power, a Member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. The Polish Government hereby consents that any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant.

It should be noted that this clause, the basis of League intervention in minorities questions, was contained in international instruments (except in the case of the declarations of Albania and Lithuania) to which the League was not a party. That is to say, so long as the League did not accept the mission which the signatories of these treaties had decided to entrust to it, everything remained in suspense and was of a purely hypothetical significance. It was therefore necessary for the League, by means of special resolutions adopted for each case, to undertake this mission, thereby giving validity and effect to the Minorities Treaties and to their "guarantee clause."

There is no need to dwell upon the provision in the first paragraph of the "guarantee clause" whose effect was to transfer to the Council of the League of Nations the right of modification of the Minorities Treaties which was enjoyed by the Principal Allied and Associated Powers as signatories. There was never any opportunity to put it into practice, for no attempt was ever made to modify the text of the treaties.

The other provision embodied in the first paragraph of the clause was of great importance, as it laid down in a precise and unequivocal manner the scope of the action which the League was permitted to take in its task of protecting national minorities. It will be remembered that the treaties contained measures and guarantees, some of which applied to all the

citizens and some to all the inhabitants, of the country.[1] This second measure of the "guarantee clause" prevented any ambiguity to which the general character of some of the rights recognized in the Minorities Treaties might otherwise have given rise. Their infraction, or the danger of their infraction, on the part of the interested states, could only be submitted to the League of Nations where persons belonging to a minority of language, race, or religion were affected.

With this delimitation in mind let us now examine the means of action which the Principal Allied and Associated Powers placed at the disposal of the League of Nations, and which were contained in the second and third paragraphs of the "guarantee clause."

Those Powers could have confined themselves to establishing the principle of the protection of national minorities, leaving the League of Nations to decide what methods were most likely to insure the success of an undertaking for which it took full responsibility. Far from doing this, however, they not only defined the rights which were to be conceded to the minorities and guaranteed by the League but also laid down the methods to be applied by the League in order to make its guarantee effective. It is important to bear this in mind if we are to assess fairly and accurately the work of the League in protecting national minorities.

What means did the Principal Allied and Associated Powers place at the disposal of the League, to enable it to fulfill effectively its task of seeing that the group of states in question carried out their obligations in respect of their national minorities? The three possible methods of League-action, as set forth in the second and third paragraphs of the "guarantee clause," comprised—

(1) The right of any member of the Council of the League of Nations to bring to the attention of the Council any in-

[1] See above, pp. 58 ff.

fraction, or any danger of infraction, of any of the obligations contained in the treaties.

(2) The right of the Council to take such action and give such direction as it may deem proper and effective in the circumstances.

(3) The right of any member of the Council of the League of Nations to refer to the Permanent Court of International Justice any difference of opinion as to questions of law or fact arising out of the articles of the Minorities Treaties, as a dispute of an international character under Article 14 of the Covenant.

When the Council of the League, in its session of October 22, 1920, examined the question of the guarantee as provided in the Minorities Treaties, Lord Balfour expressed himself in terms of the greatest reserve, asking if the Council had not a legal right to refuse to accept the guarantee for the protection of minorities. In view, however, of the general opinion of the Council that, while it could legally refuse to guarantee the rights of minorities, in practice this was impossible, he finally let the matter drop, confining himself to a request that his observations be included in the Minutes. I have mentioned this incident, as it shows very clearly how from the first the Council realized not only the difficulty of the duty which it was accepting but also the extreme inadequacy of the means placed at its disposal by the Great Powers.

It is only fair to recognize, however, that the three "rights" above mentioned, which constituted the means of action afforded the League of Nations in questions of minority protection, forced the widest breach which has ever been made in that granite-like structure known as national sovereignty. I shall not dwell on this point, as it does not especially concern minority matters as such; but I should like to bring it to the attention of all those who are interested in the problem of the obstacle represented by national sovereignty to the development of international or supernational institutions. The pro-

tection of minorities by the League of Nations is perhaps the best example of real and effective limitation of national sovereignty for the purpose of making possible international action. It will not, in fact, be easy to find matters which are of a more specifically internal nature, and which, on that account, have so consistently come within the sphere of national sovereignty, than those comprising the minority obligations: i.e., equality of treatment, and such typically internal questions relating thereto as agrarian reform, educational régimes, the use of minority languages, religious matters, etc. And on the other hand, it will be equally difficult to find any more extensive and more characteristically international action than that which the League Council was given the right to take by virtue of the second and third paragraphs of the "guarantee clause." In my opinion, a study of the League protection of minorities from this particular aspect — one of the boldest experiments which has been made in the international limitation of the sovereignty of states — would be very fruitful.

To continue the analysis of the "guarantee clause," I feel that the contrast between the extremely narrow path leading to League intervention in minority questions and the exceptionally wide field of this intervention is worthy of note.

The narrowness of the path leading to League intervention is apparent first of all from the fact that the "guarantee clause" reserved to the Council the right to examine and decide minority questions. But the path became a dangerous defile when the "guarantee clause" stated that before a minority question could be submitted to the examination and decision of the Council, it was necessary for one of its members to take the initiative of drawing the Council's attention to an infraction, or danger of infraction, of one of the articles of the Minorities Treaties. The inefficacy of such a procedure is obvious. And in the same session of the Council of October 22, 1920, Lord Balfour drew attention to this when he said: "If it

were necessary to protect a minority, one of the Members of the Council would have to take upon itself the duty of accusing the State which had not fulfilled its undertakings." The point was of decisive importance for the future of the new system. It might have been possible (though it would certainly not have been easy) for a Council member to take the initiative of pointing out a case of infraction, or danger of infraction, of the treaties, without being obliged to maintain his accusation before the Council, the purpose of his action being only to assist in supplying requisite information to the Council. It is unthinkable, however, that he would have done so if it had meant bringing a genuine accusation before that body, with all the political consequences which such an action must inevitably have involved. And as was to be expected, the signatory states of the Minorities Treaties immediately realized how important it was to them to prevent any more liberal interpretation of the "guarantee clause." From the first these states were most careful to insure that this clause was interpreted strictly in the sense that a member of the Council could exercise his right to bring an infraction, or danger of infraction, to the attention of the Council only when he was so certain of its existence as to be ready to maintain his accusation before the latter. Such an interpretation almost completely obstructed the narrow passage by which the "guarantee clause" allowed minority questions to reach the Council agenda. The League protection of minorities might thus have become a dead letter, if it had not been for the reviving influence of the Council itself on the system planned at the Peace Conference, a subject with which I shall deal later.

Once, however, this difficult defile had been traversed, the "guarantee clause" offered apparently limitless possibilities for Council action; in its own words, the Council could "take such action and give such direction as it may deem proper and

effective in the circumstances." Could one ask for more? Could international action be stated more boldly, with less regard for national sovereignty? But any enthusiasm which may be aroused by the contemplation of such boldness will be somewhat dampened when it is realized that by virtue of the provisions in Articles 4 and 5 of the Covenant, this action or direction had to be voted by the whole Council, *including the representative of the accused state;* that is to say, the apparent latitude given to the Council by the "guarantee clause" was in practice reduced to the narrow limits of negotiations with the "accused" state and to the even narrower ones of action concerted with that state. If, however, there is no cause for violent enthusiasm, neither is there any reason for dismay at the idea of the Council's having to reach an agreement with the state accused of infraction of a minority treaty regarding the best way of remedying that infraction. It should, after all, be remembered that in this, as in many other spheres of its activity, the strength of the League of Nations was exclusively political and moral. There are no grounds here for discouragement, since the proportion of human relations governed by moral and political laws and forces is incomparably greater than that controlled by material sanctions. This should not prevent us, however, from doing everything we can to broaden the latter category. And if human progress should make it possible for infractions of international obligations to become the object of material sanctions in a future supernational organization, there is no doubt that we could arrive at a much more effective system of minority protection. But actually in the system established in 1919 this possibility did not exist, and the League of Nations had in fact only a political and moral force at its disposal. This meant that the right to adopt resolutions (which in the last resort would be ineffective without a certain spirit of collaboration on the part of the state

concerning which they were adopted) was of less practical interest and importance than the existence of a procedure making possible not only negotiations, but the use of various kinds of political and moral coercion and persuasion of the "accused" state by the Council and its members. Although by these methods it was difficult to arrive at completely satisfactory solutions, compromises were almost invariably reached which, if not very brilliant from a layman's point of view, were perhaps in the circumstances more useful to the minorities and to the cause of peace.

We have touched above on a purely hypothetical aspect of the minorities problem, namely, what the League of Nations Council *might* have been able to do if the one means of access to its agenda for minorities questions had not been practically closed by the strict interpretation of the "guarantee clause." But the interested states, as we have already seen, succeeded in insuring the adoption of that interpretation. And it must be recognized that if the League of Nations had confined itself to allowing the mechanism established in the "guarantee clause" to function freely, the protection of minorities would never have been anything more than a brilliant conception, expressed in solemn language, but without the slightest degree of practical and positive value. Whatever may have been done in the matter of the protection of national minorities is due to a whole series of measures adopted by the League of Nations within the framework of the "guarantee clause," but not laid down by that clause — measures which were the life-giving element of the principle proclaimed and consecrated by the Peace Treaties. As any impartial observer will recognize, the credit for establishing this principle is due to those treaties and to their negotiators and signatories, while the credit for making its practical realization possible belongs to the League of Nations.

2. *Procedure Adopted by the Council*

Once the League of Nations had accepted the functions entrusted to it in the Minorities Treaties, it took the necessary steps to insure that these functions should be carried out in the most effective way possible.[1] The task was not an easy one, for the entire system had to be kept not only within the limits of the treaties but within the very narrow ones established by the "guarantee clause."

At its meeting in Brussels in October, 1920, the Council adopted a report submitted by Mr. Tittoni, the Italian representative, and a few days later it adopted a resolution on the subject. These two documents served as a basis for everything achieved by the League of Nations in relation to national minorities. Two steps were thereby taken to prevent the paralysis from which the League would have suffered if it had had to deal with minority questions in accordance with the strict terms of the "guarantee clause." The first was the establishment of the right of petition in favor of the minorities, and the second was the creation of the Minorities Committees of the Council of the League of Nations.

A. The Right of Petition

This right was established in virtue of the following paragraph of Mr. Tittoni's report, adopted by the Council in Brussels on October 22, 1920:

Evidently, this right does not in any way exclude the right of minorities themselves, or even of States not represented on the Council, to call the attention of the League of Nations to any infrac-

[1] In concrete terms this meant that the members of the Minorities Section, then a recently formed Section of the Secretariat, immediately devoted themselves to the difficult task of building up, piece by piece, what was subsequently incorporated in a series of resolutions of the Council under the name of "minority procedure." In this connection, I cannot fail to mention Mr. Erik Colban, the first Director of the Minorities Section, and now Norwegian Ambassador in London. It was he who was mainly responsible for this work, without which the protection of minorities would never have emerged from the realm of lofty principles.

tion or danger of infraction. But this act must retain the nature of a petition, or a report pure and simple; it cannot have the legal effect of putting the matter before the Council and calling upon it to intervene.

This same report also mentioned the procedure applicable to petitions; but that subject was dealt with in more detail in the following year, and it became the object of another resolution adopted by the Council on June 27, 1921, as the result of certain proposals submitted by the Polish and Czechoslovak governments. Briefly, this procedure was as follows: The petition was communicated, for any observations, to the government concerned, i.e., the government charged with the infraction. That government was given three weeks in which to inform the Secretary General whether or not it intended to put forward any observations. In the event of a negative response, the petition was immediately communicated to all the members of the Council for their information. In the case of an affirmative reply, the government in question was given a period of two months in which to present its comments on the petition, both the former and the latter then being communicated to the members of the Council.

Finally, certain standards had to be established, as guides for the Secretary General in determining which petitions were really worthy of being passed on to the governments concerned, and which did not merit attention of any kind. These standards were fixed in a resolution adopted by the Council on September 5, 1923, which stated that, in order to be submitted to the procedure of examination, the petitions —

(*a*) Must have in view the protection of minorities in accordance with the treaties;

(*b*) In particular, must not be submitted in the form of a request for the severance of political relations between the minority in question and the State of which it forms a part;

(*c*) Must not emanate from an anonymous or unauthenticated source;

(*d*) Must abstain from violent language;
(*e*) Must contain information or refer to facts which have not recently been the subject of a petition submitted to the ordinary procedure.

This procedure has afforded a greater target for critics of minority protection than any other. Moreover, the fact that the petitioning group (in the majority of cases the interested minority itself) did not receive any communication concerning the fate of its petition, was the object of severe criticism not only from those who might have some political interest in leveling their attacks, but also from people of good faith (and even from governments, such as that of Canada) whose impartiality cannot be questioned. Criticism was, of course, easy if it merely consisted in applying to this rudimentary and unusual procedure the same criteria that would be applied in the case of judicial procedure designed to resolve legal conflicts between two parties and to facilitate a just court decision. But it was a mistake to apply these criteria to what is known as the minority procedure, which neither in character nor objective had any analogy with the civil judicial procedure carried out in the courts of justice of the different states.

The fact was that the aim of minority procedure had no resemblance to that of civil judicial procedure. The aim of the former was to make it possible for members of the Council to obtain the most complete information possible on the facts alleged in the petition, but at the same time to avoid at all costs an arrangement under which the state concerned and the petitioning minority would appear before the Council as parties in a trial. This latter situation would have caused the complete breakdown of the mechanism. Who could reasonably have forced a government to appear at any given moment before the Council of the League of Nations for the purpose of facing members of its own population? The government would certainly have alleged that such an obligation was in absolute

contradiction to its other obligation of insuring, in the shortest possible time, the internal consolidation of the state. And who could fail to be impressed by this argument?

This procedure was a special one, *sui generis*, whose aim was informative, and if it is to be compared with a procedure of internal law, the comparison should be with that of the penal and not of the civil law. As in the case of the former, the object of the minority procedure was to clarify and prove the facts stated in the minority petition. This petition was far more like a criminal indictment than a civil law demand. For this reason it was of a public character, that is to say, it could be made by anyone so long as its source was neither "anonymous nor unauthenticated." And if it is generally considered natural and logical that the mere fact of notifying the police of a crime of which one is cognizant (even if one is its victim) does not constitute sufficient grounds for being considered as a party to the trial, and being kept informed of its development, why should a different opinion be held in the case of those who denounce an infraction of a minorities treaty to the League of Nations by means of a petition? Without going further into this comparison between the minority procedure and the judicial procedures of internal civil or penal law, it will be seen that, even from a strictly juridical standpoint, the criticism which was often leveled at the former — as though it constituted a scandalous negation of the elementary principles of justice in judicial matters — was unjustified.

But from a political and more general point of view, how should the procedure established for minority petitions be judged? It is very instructive in this respect to remember what happened when, in the spring of 1929, the League Council undertook an all-around revision of the "minority procedure." [1]

This revision originated in a Memorandum submitted to the

[1] The complete set of documents concerning this revision was published in League of Nations, *Official Journal*, Special Supplement No. 73, Geneva, 1929.

Council by Mr. Dandurand, the Canadian representative, at the meeting in March, 1929. This document had the merit of provoking an interesting discussion in the Council, in which the most outstanding personalities of the international world of that day took part. Dr. Stresemann, on behalf of the German Government, strongly denounced the procedure in force and put forward a series of constructive suggestions for its reform, almost all of which concerned the Minorities Committees. Mr. Zaleski, in the name of the Polish Government, and Mr. Titulesco, in that of the Rumanian Government, replied to Dr. Stresemann, supporting the restrictive point of view with great vigor. After a speech by Mr. Briand, characterized by his admirable spirit of human understanding and his no less admirable common sense, the Council decided that the representatives of Great Britain (Sir Austen Chamberlain) and of Spain (Sr. Quiñones de León), should assist the *Rapporteur* for minorities questions, Mr. Adatci (Japan), in drawing up a report on the results of the discussion, and should submit their concrete proposals to the Council at its June meeting.

The committee thus constituted met in London in May, and the assiduity, keenness and goodwill with which its members set out on their task of insuring greater efficiency and justice in the system made a lasting impression on my mind. In this connection tribute should be paid to Sir Austen Chamberlain, who was always ready to use the tremendous prestige which he enjoyed at that time to bring about improvements. Mr. Adatci was less dynamic, but he was characterized by an earnest desire to further justice in every possible way. Sr. Quiñones de León, by reason of his close personal ties with the most representative figures of the "minority" countries, then forming the French orbit, and also no doubt because of his aversion toward the claims of Catalan regionalism in his own country, did not display then, or at any other time, any special sympathy towards the cause of the minorities; it is

only fair to say, however, that he never placed the slightest obstacle in the way of the reform which was carried through during that period. The committee met in the room of the Secretary of State at the Foreign Office; and many times I have recalled those famous meetings when, in later years, as Spanish Ambassador in London, I entered that same room on visits to subsequent foreign secretaries, my heart full of bitterness at the terrible circumstances which had brought me there!

The report drawn up in London by the committee (subsequently known in Geneva "minority" circles as the "London Report") was based on the full Council debate which, as we have seen, had taken place in the month of March, and was the result of prolonged and careful deliberations on the part of the committee at its London meeting. Shortly afterwards, in Madrid in the month of June, it was subjected to another earnest discussion which lasted through five long sessions of the Council meeting in committee, and one of the full Council, and in which once again the most outstanding figures in the international politics of the day (Mr. Briand, Dr. Stresemann, Mr. Scialoja, Mr. Adatci, Mr. Titulesco, Mr. Zaleski) [1] took part, after their best experts had given the matter their careful consideration. Most regrettable was the absence of Sir Austen Chamberlain, whose place was taken by the British Ambassador in Madrid, Sir George Grahame. There can be no doubt that the participation of the former in the debate would have been of exceptional value, because of the very particular interest which he showed in minority questions. But there seems to me to be no justification for believing that if he had been present the decision of the Council would have been different.

[1] The committee also had at its disposal for the preparation of its report, communications addressed to it by the following ten governments: Germany, Austria, Bulgaria, China, Estonia, Greece, Hungary, Latvia, Lithuania and the Netherlands; and there were other communications from various non-official organizations.

From the very first it was clear that the "London Report," by reason of the moderation and common sense with which it had been drafted, was well able to withstand the hard blows which were to be dealt it both by those who believed that it went too far, and by those who felt that it did not go far enough.[1] The resolution which the Council adopted on June 13, as a result of these long deliberations, did no more in fact than reiterate the recommendations contained in the report.

As regards the right of petition, all that the London Report of 1929 proposed, and that the Council, on adopting its resolution, added to the procedure already in force, was a stipulation that the Secretary General, on declaring a petition "non-receivable," should inform the petitioner of this decision. It cannot be denied that with respect to the function which it fulfilled in the entire minorities procedure, the petition remained what the Council wanted it to be under the resolution of 1920, i.e., a source of information for members of the Council, and there was no question of the petitioner being a "party" in a lawsuit against the state concerned. The modest improvement provided in 1929 was the only one effected in the petition procedure, although this was not due to any lack of desire on the part of the League of Nations to make the protection of minorities effective; on the contrary, it was due rather to the conviction that to make extensive changes in the procedure would lead to certain and immediate ruin of the minorities system.

Personally, I have always been and continue to be of the opinion that fundamentally the right of petition, as it was established and practiced by the League of Nations, is not open to any criticism of principle. On the other hand, there can be no doubt that in spite of its automatic nature, the practical value of such a procedure depends largely on the

[1] For reference purposes, and on account of its general importance to the subject of this study, I have reproduced the text of this document as an appendix.

interest and impartiality of those who are called upon to apply it. This task fell chiefly to the lot of the Minorities Section and constituted, together with the work of assisting and collaborating with the Minorities Committees (of which mention will be made later), the main field of its activity. The declaration of receivability or otherwise of the petitions was undoubtedly one of its most delicate functions, for this was a decision which the Secretary General made entirely on his own responsibility and not in the execution of a resolution adopted by one of the deliberating organs of the League; what made the situation even more difficult was that although, if the petition was declared receivable, the government concerned could protest against the decision to the president of the Council, the petitioner had no redress whatsoever if a contrary decision was reached. I think I can fully say that we in the Section always acted most carefully, examining the delicate questions which arose with the greatest possible impartiality, in order to determine, for instance, if the source could be considered "well-established," if the language in which the petition was drawn up was "violent," and if its object was included within the limits of minority protection "in agreement with the Treaties." I have spent more than one sleepless night trying to decide one of these questions, a question perhaps uninteresting in itself, but whose decision was important because it involved matters of principle, or because, as has already been said, it was just as needful, where the protection of minorities was concerned, to act rightly and wisely in the innumerable matters of limited interest (even though they often related only to individual cases) which were the object of continual petitions, as in those of greater and more general moment.

B. Minorities Committees

It was this institution of committees which, together with the right of petition, gave life to the "guarantee clause" of the

Minorities Treaties and made it possible for the protection of minorities to become in some measure real and effective. I have already alluded to the creation of Minorities Committees as a result of the resolution adopted by the Council on October 25, 1920, which reads as follows:

> With a view to assisting Members of the Council in the exercise of their rights and duties as regards the protection of minorities, it is desirable that the President and two members appointed by him in each case should proceed to consider any petition or communication addressed to the League of Nations with regard to an infraction or danger of infraction of the clauses of the Treaties for the Protection of Minorities. This enquiry would be held as soon as the petition or communication in question had been brought to the notice of the Members of the Council.

In its desire to insure that its Minorities Committees should be as impartial as possible, the Council decided on June 10, 1925, that membership on the committees should not be permitted in the case of:

> (*a*) The representative of the state of which the persons belonging to the minority in question are subjects, or
>
> (*b*) The representative of a neighboring state of the state to which the persons belonging to the minority in question are subjects, or
>
> (*c*) The representative of a state the majority of whose population belong from the ethnical point of view to the same people as the persons belonging to the minority in question.

Finally, in the resolution adopted in Madrid on June 13, 1929, on the basis of the London Report, the Council introduced two formal and two fundamental modifications in connection with the functioning of the Minorities Committees. By virtue of the first formal modification, the president of the Council was authorized in exceptional cases to invite four instead of two of his colleagues to serve as committee members. The committees thus constituted were therefore called

in Geneva parlance the "Committees of Five" in contrast to the "Committees of Three." By virtue of the second formal modification, the committees were invited to hold more frequent meetings and not to confine themselves to those held during the meetings of the Council. The two fundamental modifications both applied to cases where the examination of a question by a committee ended without its members asking for it to be included in the agenda of the Council. In consequence of the first, members of the committee were obliged to communicate in writing the result of this examination to the other members of the Council; and by virtue of the second, the Minorities Committees were required to consider seriously the possibility of publishing, with the consent of the government concerned, the result of their examination of each case submitted to them. The Council expressed the hope that the governments in question (on whom it thus aimed to exert pressure) would whenever possible give their consent to such publication, which could be effected by means of an insertion in the *Official Journal*, either in the form of the letter from the members of the Committee informing the other members of the Council of the result of their examination, or in the form of any other text that might seem to them expedient.

The creation of the Minorities Committees meant that no member of the Council could ever be placed in the difficult position, envisaged by Lord Balfour, of having to take the initiative in accusing a government before the Council of infringing its obligations in respect of its national minorities. However much the moral obligation of the Council members might have been stressed, it was to be feared that their natural repugnance to such a situation would not be overcome unless they had some political interest in making difficulties for the "accused" government; but action taken for such a motive would have been even worse than inaction, since it would have vitiated the whole system by making it serve the political

interests of the Council members, instead of insuring a reasonable and equitable treatment of national minorities.

It was thought that by "collectivising" the initiative with the creation of Minorities Committees, and placing responsibility for it conjointly on three members of the Council, this repugnance would disappear and the way would be left open for minority questions to be examined and decided by the Council. For this reason the states which had signed minority obligations looked on the innovation of the Minorities Committees with great misgiving and did everything possible to maintain the purity of the "guarantee clause." In the first place, they insisted on a statement being made to the effect that the one object of the examination of petitions by the committees should be to help the Council members to decide whether or not it was desirable to bring the infraction or danger of infraction of the treaties to the attention of the Council. In the second place, they objected strongly to the responsibility for this initiative being transferred from the members of the committee, as individuals and Council members, to the committee as a collective and, to a certain extent, an impersonal body.

But reality was far stronger than these juridical niceties, and very soon the Minorities Committees became in fact what Mr. de Mello Franco, the Brazilian representative and *Rapporteur*, termed in his report of June 10, 1925, "a normal body for dealing with that part of the work of the League of Nations which concerns the protection of minorities." The fact is that these committees might thus be termed "the usual forum" — or, if it is preferred, the forum of first instance — for the examination and resolution of minority questions by the League of Nations, the Council remaining a forum of special or superior instance to be appealed to in a comparatively limited number of cases. This evolution was in accordance with the nature of things and could not have been

checked. In the majority of cases the committees were faced with a situation which, while it was not satisfactory and did not bring an immediate end to their examination, certainly did not justify the submission of the matter to the Council without the government concerned being given the chance to remedy it. The committees were thus forced to negotiate with the governments regarding the best means of resolving questions which the latter had not satisfactorily explained, and a situation was soon reached whereby the committees became the "usual forum" of the League in matters concerning the protection of minorities. It was not a small merit of these bodies that they were accessible not only to the minorities themselves but to all individuals or communities interested in the fate of the latter, and who might bring an infraction, or danger of infraction, of the treaties, to the attention of the League of Nations.

It has already been said that the Minorities Committees consisted of the acting president of the Council and two (or in exceptional cases since 1929, four) other members of the Council; that is, each member of the Council formed part of, and presided over, the Minorities Committees which were constituted during the period of his presidency of the Council.[1] Although on some occasions various questions accumulated for the attention of one and the same committee, the general rule was that a committee was constituted to deal with each question. It was therefore not unusual to find twelve or fourteen different committees meeting at the same time. This gave rise to a task which I am sure all my former colleagues of the Minorities Section will recall with a feeling of anguish — the drawing up of a time-table for all these different committees, and arranging that all should have sufficient time at their disposal for examining the fresh information which had been

[1] The presidency of the Council was assumed by its members in strict alphabetical order, the change taking place after each ordinary meeting.

collected since their last meeting, and for deciding on their future action. In order to simplify the work for the Council members, the committees met during the sessions of the Council, and this often meant that questions were not given the care and attention which their delicate nature required. In order to overcome this difficulty, the Council, in 1939, decided to recommend that the Minorities Committees should meet in the intervals between the Council meetings, a reform which in the short period of its application helped considerably to give the committees that tranquillity and calm which were so necessary to the success of their mission, but of which they were often deprived when they met in the atmosphere of haste and pressure normally surrounding sessions of the Council.

Each committee was formed as soon as the observations on the petition by the government concerned were received in the Secretariat, and both petition and observations were communicated to the members of the Council "for their information." Normally the committee met on the occasion of the subsequent meeting of the Council. These committee meetings were from the very first of a friendly nature, with no protocol whatsoever, and the absence of minutes made the discussions much more spontaneous. It was not often that the first delegates assisted at these meetings, and normally the Great Powers (permanent members of the Council) were represented by their legal advisers. Nevertheless, on certain occasions, the political importance of questions — such as, for instance, that of the Polish Government's punitive expedition in the Ukraine in 1930 — induced the first delegates of the Great Powers to attend the committees personally; and in this particular case concerning Poland, the president of the committee, Sir Austen Chamberlain, called a special meeting in London, in which he took a very active part. The deliberations of the Minorities Committees were considerably facilitated by the freedom and spontaneity which characterized them, and it is to be regretted

that the advantages derived therefrom were lessened by the conditions of haste and pressure to which I have referred.

The committees, as befitted their private and intimate character, generally met (except in the case of certain sessions held outside Geneva), in the study of the Director of the Minorities Section. As a general rule, in the period between the formation of the committee and its first meeting, the Minorities Section used to prepare for the members a Memorandum summarizing as briefly as possible (*a*) all the information which was contained in the petition, and which, if correct, might be considered as evidence of infractions, or dangers of infraction, of one of the clauses of the Minorities Treaty, and (*b*) the explanations put forward by the government concerned. These "Memoranda" were always indispensable, not only because the petition and the observations of the government often left much to be desired from the point of view of clarity and conciseness, but also because, in their desire to level accusations or to justify themselves, the petitioner and government, respectively, extended their comments to matters which had no relation with the treaties, and which, therefore, exceeded the sphere of activity of the committees. The Director of the Minorities Section always attended the meetings, accompanied by the member of the Section responsible for the question under discussion. Generally, the Director began by passing on to the members of the committee the information which he had obtained in his conversations with the representative of the government concerned, and with the petitioner or representatives of the minority to which the petition pertained. The last-mentioned contacts demanded the use of exceptional prudence on the part of the Minorities Section, for although it was soon possible to insure that the government involved would not put forward any objections of principle,[1]

[1] The principle of the utility of these contacts was established in the resolution adopted by the League Assembly on September 21, 1922.

disastrous consequences could easily have resulted from the slightest indiscretion.

In the vast majority of cases, this first examination of the petition and of the observations of the government concerned would show that some of the allegations were unfounded, while on the other hand some of the explanations of the government would be seen to be unsatisfactory. If the committee had abided strictly by the texts defining their competence, they would immediately have brought to the attention of the Council the points on which the explanations of the governments did not give satisfaction and would thus have brought their task to an end. It is a debatable question whether this procedure would in the long run have been more beneficial to the cause of the minorities and, in particular, to that of international collaboration. Having carefully weighed the pros and cons, I have come to the conclusion that in practice such a procedure not only would *not* have been advantageous but would in fact have been definitely prejudicial to the cause for which the protection of minorities had been established by the League of Nations. The Council would have been inundated with minority questions — in the main of a very limited political interest. This situation occurred in respect of Upper Silesia, as the result of the special procedure established in the German-Polish Convention of 1922, and the experiment was not very encouraging. In my opinion, as far as minority questions are concerned, it is not the great persecutions — always of an exceptional nature and the sign of a general crisis which cannot be remedied by the limited resources of minority protection — which are of major importance in the work of a minorities protection system, but the measures of limited scope, the small acts of every-day life, the cases of individual persecution and insults. I feel that it is necessary to have at one's disposal not so much an instrument with which to deal with serious cases, or questions of importance and general

interest, but rather effective means of insuring that problems of limited scope, including individual ones, are carefully examined and fairly resolved.

Generally speaking, the committees found themselves faced with the following alternatives: (*a*) that of putting an immediate end to their examination, if they considered that the observations of the government satisfactorily explained all the allegations of the petition; (*b*) that of asking that the question be placed promptly on the agenda of the Council, if they felt that the explanations of the government did not remove the suspicion of an infraction or danger of infraction, but rather confirmed it; (*c*) that of entering into negotiations with the government concerned in order to obtain supplementary explanations. Sometimes the latter were genuinely desired, but more often the real object of the negotiations was to arrive at certain reforms or modifications which would make it possible for the committee to sanction a legal or factual situation which originally had been considered contrary to the provisions of the Minorities Treaty. Alternatives (*a*) and (*b*) were very rarely adopted; there were but few cases of the first, and of the second I have no recollection at all. Alternative (*c*) was the general rule. In the vast majority of cases, the committees, whether in a sincere desire to complete their information, or as a means of negotiating concessions, brought to the notice of the government concerned the points on which they considered its observations unsatisfactory, and asked for supplementary information.

The minorities, and the governments which encouraged and supported them in their claims (in particular the German and Hungarian governments), always displayed great animosity and distrust of this method of negotiation between committees and the "accused" governments. And their attitude was shared by not a few men and women of standing, representing a body of neutral opinion interested in all matters relating to

national minorities. I very much doubt whether this attitude was justified, and still more do I question the opinion that it would have been preferable for these questions to be examined and resolved by the Council rather than negotiated by the committees. My own feeling, as I have already said, is that it would have been not only *not* beneficial, but actually prejudicial, to the cause of the minorities or of international collaboration to have submitted to the Council all those minority questions which were examined and resolved by the committees. Those who are of a different opinion have not perhaps reflected on a point which may or may not seem right, and which we may praise or condemn, but which the League of Nations had to accept as a general postulate in many spheres of activity (and in particular that of minority protection). This is that in view of the limited importance, in general, of each of the questions examined, one could not count on the application of the coercive methods at the disposal of the League in order to force the "guilty" state to adopt the necessary measures for the fulfillment of the Minorities Treaties (particularly since such measures concerning minority questions were *specifically internal* ones); in consequence the only weapons at the disposal of the League were those of moral pressure and wise negotiation, and the only possible outcome a formula accepted by the government concerned. Upon reference to the Council, therefore, of any given case, the Council, like the committees, had no choice but to open negotiations with the government; negotiations which were carried out by the *Rapporteur*, accompanied in certain cases by two other members of the Council, who formed a new committee (this time a committee of the Council, properly speaking). This new committee did exactly the same as the committee of minorities, that is to say, it sought a formula which, in agreement with the government concerned, should as far as possible respect the terms of the treaty.

The question may be asked: Was the Council, through its *Rapporteur* or a special committee, able to negotiate a minority question in more favorable conditions than a Minority Committee? The essential difference between the action of the Council and that of the Minority Committee was that the first was given publicity, to the extent that the decision to open negotiations was taken by the Council in public, and that the results of the interchange were public since they were openly confirmed by the Council; whereas the whole procedure of the Minorities Committees, since it *preceded* the only official action recognized in the treaties (viz., the right of the Council members to bring to the attention of the Council the infractions or danger of infraction of the treaties), was necessarily of a semi-official and confidential nature.

On the use of publicity in furthering the success of these negotiations, however, much could be said. Those who, like the German and Hungarian governments (the Bulgarian Government was far less interested in these questions), saw in the mechanism for the protection of minorities, in particular, a means of opposing politically the states created or enlarged (according to the point of view) at their expense, naturally attributed great importance to this publicity, and to the political capital they acquired when the questions were examined in the Council. But for those who, during the inter-war period, were doing their best to obtain practical and positive results from the protection of minorities in order to avoid the difficulties which the oppression of national minorities would create, the situation was very different. This does not mean that we considered publicity inevitably harmful, but it does mean we did not always find it beneficial. Publicity can be advantageous when the matters involved are likely, by reason of their nature and importance, to create a powerful current of opinion which may act as moral pressure on the side called upon to make reasonable concessions — that is to say, in

minority questions, the governments. But this was not usually the case. It is true that Poland's punitive expeditions in 1930 in the Ukraine, for instance, may have awakened considerable interest in the British public; but it was not reasonable to hope that the innumerable questions of limited, and even individual, importance, which were the object of many (if not the majority) of the petitions addressed to the League of Nations, would arouse a comparable interest. And it must be remembered that even in the case of Poland, the movement of opinion was not sufficiently great and continuous to overcome Polish resistance, which was cleverly supported by the French Government; and as a result the initial impetus for action by the British Government was eventually checked.

On the other hand, publicity — which in this sense is a two-edged weapon — could make it easy for the government concerned to put forward considerations of prestige, concerning which the ruling classes are invariably sensitive. Here it should not be forgotten that those called upon to adopt a firm attitude against the "guilty" government were also governments; and since everybody, including the latter, felt the questions to be of a strictly domestic character, it was especially easy to impress the members of the Council or of the committees with that type of argument. Time and again excellent results have been obtained by an "accused" government which placed before the members of a Minorities Committee — who in view of the failure of their efforts were ready to submit the question to the Council — some such considerations as the following:

> I am ready to make reasonable concessions, but in the circumstances I need time and a certain confidence, for these concessions will provoke strong internal agitation in the country; it is, besides, essential to be able to maneuver so that I may put them forward as spontaneously adopted measures. This will be impossible if the question is brought

before the Council for public discussion. If this happens the reaction produced in my country against external interference in purely internal questions, will be much stronger than the Treaties themselves, and in spite of myself I shall be obliged to adopt a negative and uncompromising attitude.

I should like to place before the reader one last consideration in favor of the policy which converted the Minorities Committees into the "usual forum" of the League of Nations in questions concerning the protection of minorities. We were all firmly convinced that in the majority of cases it would be impossible to resolve minority questions, considered individually, in a manner which would add to the reputation and authority of the League of Nations. This being the case, was it not preferable that everything should remain behind the closed doors of the committees rather than that the Council should have to bear responsibility for the failure? There was a fundamental reason for our conviction — that in the negotiations between the committees and the governments concerned the former were in an obviously inferior position, since, as I have already said, circumstances were such that they were bound to prefer any agreement, however mediocre, to a rupture. The governments were as well aware of this as the committees, and the situation certainly did not make for harmony and the granting of concessions. This "congenital" inferiority could only have been compensated by a firm attitude on the part of the Great Powers. But it would hardly have been reasonable to expect this attitude in the case of France on such questions, for instance, as those concerning minorities in Poland, Czechoslovakia, Rumania or Yugoslavia, i.e., in the countries in her orbit, the last three of which formed her line of security in Central Europe under the name of the Little Entente; or in the case of Italy, whose large German population in the Southern Tyrol, incorporated in her territory by the Treaty of

St. Germain, was deprived of all guarantees and subjected to a treatment by the Italian authorities which shocked the whole of Europe; or in the case of Spain, which still bore in her side the open wound of the Catalan question, and whose representative in the League of Nations during that time was genuinely shocked by everything connected with national claims within the state. There remained the British Empire and, since her entry into the League of Nations in 1926, Germany.[1] The British Government's policy was inspired by a sincere desire for objectivity; but unfortunately the fluctuations of the general political situation, and more particularly of British relations with France, wasted much of the excellent effort which Great Britain so constantly contributed to the ungrateful task of the Minorities Committees. In the realm of minority protection the German Government gave evidence of little political consciousness; suffering from the effects of a genuine sense of inferiority and a persecution mania, it never realized the possibilities for Germany of the League of Nations minority protection mechanism. From the very first it adopted an attitude of hostility and mistrust, which ended by discouraging those of us who were disposed to welcome its collaboration with absolute impartiality. On the other hand, in a series of questions of limited importance, in which the German Government was directly or indirectly interested, it rarely showed any clear perception of the border-line between the reasonable and the unreasonable. On many occasions, it could have been successful in its negotiations, if only it had been careful to fix an attainable objective; but each time it was defeated by this lack of a sense of proportion. All this may appear of little moment in comparison with what is happening in the world today. Nevertheless, when so much has been written and said concerning international problems from general points of view,

[1] The Soviet Union had scarcely any opportunity of sharing in the activity of the League of Nations concerning minority questions. At the time of her entry into the League this activity was already in full decline.

I feel that it is not entirely useless to set down these considerations on more specific points. I am increasingly inclined to believe that in politics (internal or international), the great decisions which statesmen sometimes adopt, and with which they twist or straighten the course of history, are no more important than the accumulation of every-day actions, which form little by little what is afterwards known as public opinion, or a collective state of mind; and it is this opinion and this state of mind which in a good democracy must determine the feelings and policy of the state.

C. Minorities Section

In this sketch of the Geneva mechanism for the protection of minorities, it is necessary to devote some attention to the Minorities Section of the Secretariat. And the fact that I had the privilege of serving in this Section for eleven years should not deter me from stating my profound conviction that both its work and its manner of functioning make it one of the most encouraging examples of an international or supernational administration. More than to anyone else, credit for this is due to Mr. Erik Colban, who for the eight years during which he was Director of the Section not only laid down the basis of its organic structure but, what is perhaps more important, firmly established its procedure and its working methods. All of us in the Minorities Section were well aware of the general atmosphere of discontent, and even of hostility, surrounding us. And it was by no means one of the easiest tasks of its Director to combat the effects of this atmosphere and to maintain the morale of the Section. Nevertheless, viewing the matter with the perspective of time, I believe that no one really had any doubts concerning the absolute and scrupulous objectivity of its work and of the sincere desire of its personnel to act fairly and justly.

The Minorities Section performed on behalf of the Minori-

ties Committees, and when necessary the Council, the task of what might be called a technical secretariat. In the first place, it was responsible for the application of the petitioning procedure. This involved the delicate matter of "receivability," one of the questions which, as I have said, the Secretary General decided on his own authority. Then there was the ever copious correspondence with the governments concerned, with the object of insuring a reasonable (though always elastic) observance of the period fixed in the Council's resolutions for the presentation of their remarks. In the second place, the Minorities Section *prepared* the question for examination by the committee, selecting from each petition such allegations as referred to infractions or dangers of infraction of the treaties, and incorporating them in a Memorandum, of which mention has already been made, together with the observations and explanations of the government involved, for presentation to the committee. It is difficult to exaggerate the importance and delicacy of this work, and the responsibility which it placed on the shoulders of the Section members, for in nearly every case the Memorandum was one of the documents which served as a basis for the committee's examination. This was fully realized in the Section, and the care with which the document was prepared is evidenced by the fact that there was never a single deficiency noted in the presentation of the allegations, or of the government's observations. In this preparatory work the Section passed on to the committee as many reports as it could obtain through the usual channels of information (press, publications of all kinds, etc.) and as were, in its opinion, of interest in the study of the question. In general, the examination of each question began by an oral report presented to the committee by the Director of the Section, which not only contained a summary of the written Memorandum previously communicated to the committee but also included all the pertinent information in the possession of the Section.

In this same report the Director defined with the greatest possible care the specific point, or points, on which the committee would have to make a decision. It is scarcely necessary to add that the Director was always ready to submit his opinion concerning the most adequate procedure to the committee if, as often happened, the latter called for it. As has been said, in the majority of cases the committees opened direct parleys with the "accused" governments, either to clear up points in their observations which had remained obscure, or to insure the adoption of certain measures which the committees considered necessary for safeguarding the integrity of, and respect for, the Minorities Treaties. These negotiations were usually carried out by the Minorities Section, without any intervention on the part of the diplomatic services of the states represented in the membership of the committees. The latter specified their objectives but in general gave great latitude to the Minorities Section, so that the Section could carry on the negotiations in the manner which it judged most efficacious and appropriate. Broadly speaking, the essential object of these negotiations in each case was to insure a minimum of concessions or reforms which would enable the committee to consider the question as satisfactorily resolved. Apart from the powers of persuasion of the Director of the Section and his collaborators, the only means of pressure consisted in the implicit threat that unless a formula could be reached which it could accept as reasonable, the committee would be obliged to bring the matter before the Council. Such a course the governments used to try to avoid at all costs, and in this sense there was the possibility of exerting moral pressure which was real and effective. But, on the other hand, as soon as there was the slightest sign that this measure might be adopted, the government concerned nearly always managed to prevent its adoption by the intervention of friendly governments. This was by no means difficult, for in most cases the idea of placing

a minority question on the Council agenda was viewed with dismay not only by the government directly concerned but also by the members of the committee, and in general by those of the Council as well. Each of us was firmly convinced that the Council did not possess the necessary impetus to emerge successfully from situations arising when a minority question acquired the notoriety which was the natural consequence of its inscription on the Council agenda. And governed by this skepticism, we resigned ourselves to trying to obtain the best possible result from the negotiations between the committee and the government.

These negotiations usually took place in Geneva. They were conducted with the government's delegates to the Council or Assembly if either of those bodies were then meeting, or with its permanent delegates in Geneva in the intermediate periods. But often the Director of the Section would visit the capital of the state concerned in order to discuss the question directly with the government. This practice had many advantages. In the first place, as the journey could not be kept secret, it was an indication, both to public opinion and to the minority concerned, of the interest which the League of Nations showed in the question of minority protection. Moreover, it saved time, as all the necessary information was available in the capital; whereas, if the negotiations took place at Geneva, the need for some additional data even of the most insignificant character afforded the governments at times a pretext for prolonging the proceedings for weeks or even months. Lastly, as all negotiators realize, the prospects and facilities for reaching agreements increase in geometric proportion as one rises, so to speak, in the hierarchical scale of the state and approaches the seat of authority and power. It is much easier for a high official to instruct a delegate or plenipotentiary not to compromise, than to remain intransigent himself in the face of reasonable arguments and considerations. My constant ex-

perience has been that direct negotiation with responsible statesmen has achieved speedier and more satisfactory results than that carried out with subordinate delegates. This does not mean, of course, that matters of a really complex nature should be left solely to settlement with men who occupy the highest offices but who can neither know nor appreciate the scope of the agreement to which they are subscribing, and who, therefore, ought to delegate much of the actual negotiations to qualified experts. The fact that they sometimes ignore the need for expert assistance has constituted one of the dangers from which international life has suffered in no small degree during recent years.

In order not to offend in any way the susceptibilities of the governments, the Director of the Minorities Section always made these visits, and the investigation tours which will be mentioned later, on their invitation. It was the general practice for a member of the Council, or of the committee itself, to indicate to the government concerned that it would be desirable for the Director of the Section to discuss the question at issue with members of that government, and as a result of this semi-official indication, the government would address an official invitation either to the Secretary General or to the Director of the Section himself. I have explained this procedure in some detail, because in my opinion these visits represented the most advanced point which has been reached in what may be termed international intervention in the internal life of states. Thus, an international functionary, representing an official international organization, would visit the capital of a "sovereign" state in order to discuss with its government matters which have always been considered as specifically reserved for the internal sovereignty and control of states: the organization and running of schools by a section of the state's own citizens; police treatment of certain persons who should be considered, on equal terms with others, as citizens of the

state; facilities to be accorded groups of certain persons, also citizens of the state, to use their own language or practice their own religion; the method of applying agrarian reform, etc. Although everything was done to prevent these visits from assuming the character of "inquests" or investigations — since it was felt that permitting tendencies in that direction might not only have wounded the susceptibilities of the government, but, what would have been more serious, would have helped to undermine their authority — there can be no doubt that such visits were among the first attacks made up to the present on the sacrosanct principle of national sovereignty. No great practical results in that field could have been expected from them, particularly as the experiment was carried out within the framework of a system which boasted as one of its fundamentals this same principle of respect for "national sovereignty." Hence the tremendous practical difficulty of making these visits without exceeding the limits imposed by the recognition of this principle, or causing deep disappointment to those who, taking a superficial view, considered them as real international "inquests" for the purpose of exposing the "iniquities" of the state in national minority matters. In this, as in practically everything else, the League of Nations suffered the fate of pioneers; a fate which was particularly bitter and disagreeable when people forgot that its task was merely to explore new territories rather than to seize the inexhaustible riches which were doubtless to be found there.

As an official of the Minorities Section, and later as its Director, I had the opportunity of making repeated visits to Prague, Belgrade, Bucharest, Warsaw, Athens, Budapest and Sofia. During the twenties, that is to say, in the ascendant period of the League of Nations, when it was perhaps the greatest force of all those concerned in the complex and intricate political game of Central Europe and the Balkans, the Director of the Section spent approximately six months of

every year visiting the countries which had assumed minority obligations. The chief importance of these tours lay in the opportunity they afforded for discussing and studying on the spot, and with the official and non-official elements directly interested, a series of political and social problems for which the Central European countries and the Balkans might be termed a regular experimental laboratory. Besides this, these visits made it possible to gain an idea of the general political situation in which the questions arose and to become acquainted with the people in the ministries and other official centers who were entrusted with the task of finding solutions — and such knowledge was essential if an opinion was to be expressed on the merits or demerits of a specific measure, or advice given concerning the means of solving the question submitted to a committee.

In this sense the visits constituted the most effective means of overcoming one of the gravest dangers which beset our work in Geneva, and which the work of any international political organization of a permanent nature must inevitably face: insufficient knowledge of special local conditions in preparing solutions for political problems arising within the states. Without such knowledge there was the equally serious or even worse danger — that an international official would allow himself to succumb to the natural temptation of believing that the local, political, social, economic and psychological conditions of the country in which the solution was to be applied were the same as those of his own country. This constituted one of the most serious hazards attendant on the work of the League of Nations Secretariat, and particularly on that of the protection of minorities, for in order to guarantee the impartiality of minority protection, the rule was established from the very first that no citizen of a country with minority obligations guaranteed by the League could participate in its activities in that field. For an Australian, a Norwegian, an

Irishman, a Persian, a Colombian or a Spaniard to understand reasonably well the cause of problems so closely related to the temperament and idiosyncrasies of each country as those of national minorities, an intimate and continuous contact with the local realities of each country was essential. But reasons of economy (due to lack of understanding or appreciation of the needs involved) and the passive resistance of the governments to these visits (particularly when the visiting officials were not very well known) made it impossible to insure that members of the personnel of the Section would be as familiar as might be desired with the local conditions of the countries whose minority problems were especially entrusted to their charge.

* * *

All who consider the matter dispassionately must recognize that the guarantee of minority rights established by the League of Nations on the basis of the Minorities Treaties did not give satisfaction to the governments of the "minority" countries, to the minorities themselves, or — and this was the most serious factor of all — to that world public opinion which was interested in minority questions during the last post-war period.

With rare exceptions, statesmen of countries subjected by the treaties to minority obligations considered the intervention of the League of Nations as an irritating interference in the domestic life of the country, and as likely to prejudice the internal consolidation of the state.[1]

[1] I refer here to the general attitude towards the institution itself, and not to that of official elements towards ourselves personally, which was always one of trust and genuine cordiality. As far as I am concerned, I may say that the twelve years which I dedicated to "national minorities" yielded a rich and abundant harvest of personal friendships in every country of Central Europe and the Balkans, friendships which are one of the most important items on the credit side of my life during that period. We were welcomed with sympathy, and no one doubted our *bona fides* and good intentions.

Criticism from the minorities was even more severe. All of them, without exception, openly voiced their disappointment with the system. This discontent, though diffuse in the early days, was a very real one and manifested itself in what was known as the "Congress of Minorities," consisting of an annual meeting at which the minorities of states subject to minority obligations were more or less officially represented. With the establishment of a permanent secretariat, this congress attempted to win recognition for itself as the authorized representative of these minorities. The attempt was unsuccessful, however, neither the governments nor the League ever affording such recognition. But in spite of this, the organization achieved considerable importance and became on many occasions the authorized mouthpiece of the national minorities of Europe concerning questions of a common interest. It is hardly necessary to say that governments with minority obligations always regarded it with disfavor, believing that its object was to prevent internal consolidation by provocative means, and that it was supported politically and financially by the German Government. My own impression is that this was not far from the truth; and the atmosphere of suspicion which always surrounded the Congress of Minorities did much to deprive it of authority and efficacy.

But the serious aspect of the situation was, as I have said, that public opinion interested in minority questions (and nowhere was a greater or more objective interest shown in these questions than in Great Britain) had by no means an unreserved admiration for the Geneva system, and sometimes adopted an openly critical attitude. The method of compromises and adjustments, of friendly pressure and persuasion, could hardly satisfy those (and they were in the majority) who had hoped to find in the League protection of minorities the spirit and method of the judge rather than of the diplomat. The fact that I consider such an attitude a mistaken one does

not lessen in the slightest the justification for discontent with the League methods of dealing with national minorities which was inevitably felt by those who shared that attitude.

This discontent was not only manifested in criticism, partly constructive and partly negative, but was also responsible for a movement in favor of entrusting minority protection to a "permanent commission" formed of independent personalities, whose mission would be to examine means whereby the states could fufill their minority obligations and to inform the League Council of any infractions which might come to their notice. In the second session of the Assembly (September, 1921), an outstanding British personality, Professor Gilbert Murray, as delegate for South Africa, put forward the following proposal:

> That, in order effectively to carry out the duties of the League in guaranteeing the protection of minorities, the Council be invited to form a permanent commission to consider and report upon complaints addressed to the League on this matter, and, where necessary, to make enquiries on the spot.

This proposal was withdrawn, as it was thought that the new Minorities Committees would achieve the same object as a permanent commission. It was possible to believe this at the time when no one had any very clear idea as to how these committees would work. But soon those in favor of a permanent commission realized that they had been mistaken in withdrawing the proposal, and there was, in fact, no real interruption in the more or less active campaign for this entity. Composed, as it would have been, of independent personalities, and not of government representatives like the Minorities Committees, it might perhaps have been more satisfactory than the latter, from the point of view of those who hoped that the League protection of minorities would follow a straight and clear-cut line and would be influenced solely by strict considerations of justice. But would this have been better for the

minorities themselves and, above all, for the cause of general peace?

In order to answer this question, we must bear in mind the serious danger of applying criteria of strict justice not only when the necessary coercive machinery is lacking, but also when the public conscience is insufficiently developed to be impressed by such criteria. And this was the situation with respect to minority protection during the last post-war period. Every subsequent event in international life has proved to the hilt how unwise it would have been to have trusted in an application of the Covenant's coercive provisions for maintaining the integrity of the Minorities Treaties. Moreover, because in practice the "minority question" never arose in its entirety, but in a multitude of parts, each of very limited importance, it was always difficult to awaken in international public opinion an interest sufficiently strong and persistent to form an adequate basis for League action inspired principally, if not exclusively, by criteria of strict justice. Those very people who, in general terms, attacked the Geneva "procedure" for its determination to seek the help of the "accused" governments in remedying situations caused by the non-fulfillment of the treaties, have themselves many a time hesitated, when faced with specific cases, to maintain the legalist criterion in its entirety and have finally admitted that, in the circumstances, it was better to try to reach, in agreement with the accused government, a reasonable compromise!

In my opinion, unless and until supernational methods of coercion, organized by rule of law, are imposed, the foregoing considerations must always be taken into account in guaranteeing internationally the fulfillment of obligations which are international in form but national in essentials. When the only weapons at one's disposal are persuasion and moral pressure, it is wise to establish the most adequate procedure possible for obtaining the best results from their use. Considered from the

general point of view, or in the abstract, so to speak, there is no doubt that criticism can justifiably be leveled at minority protection and its methods. But to accuse the League of Nations minorities system, as it was actually established, of not having made use of weapons which were beyond the reach of the League, is manifestly unfair.

Moreover, any attempt to apply decisions adopted in accordance with strictly juridical criteria when (as indicated above) there is no adequate coercive machinery, not only is doomed to failure, but almost invariably aggravates the evils which are to be remedied. In the political atmosphere of the last post-war period, a rigid and legalistic attitude on the part of the League of Nations would have had deplorable consequences for the minorities and — what would have been worse — for the cause of general peace. Would it not have been folly to allow the League procedure for protection of minorities to clog the working of the new international machinery instead of acting as a lubricant? And what means had the League for effectively protecting the minorities themselves against the disagreeable consequences of the irritation which this procedure would inevitably have created among the governments concerned?

The latter consideration is one which must always be carefully taken into account in situations as complex and delicate as those arising in connection with national minorities — at any rate until such time as effective coercive machinery is set up for insuring the fulfillment of international obligations. What is needed is to apply to this specific problem a general rule of conduct — that rule which, like so many others, finds its most human interpretation in the immortal work of Cervantes.

Readers of the story of Don Quixote will remember that as soon as the latter had been dubbed a knight by the innkeeper, he set off for his native village for a supply of money, clean

shirts, and a squire to attend him. Passing by a thicket, he heard the sound of doleful cries and hastened forward to "redress the wrong," in accordance with the laws of the order of knighthood which he had just entered. The cries proceeded from a young boy of fifteen named Andrew, whom John Haldudo, his master, had tied to an oak tree and was beating mercilessly because the lad had claimed certain wages which were owing to him. Don Quixote, as a champion of justice, forced Haldudo at the point of the lance to untie the boy and to promise him his just dues. But no sooner had Don Quixote left them than Haldudo, far from fulfilling his promise, tied the boy up to the oak tree again and gave him twice as many lashes as he had originally intended.[1] This was recounted to Don Quixote by Andrew himself when the two met again later. "And now I may thank you for this, for had you rid on your journey, and neither meddled nor made, seeing nobody sent for you, and it was none of your business, my master, perhaps, had been satisfied with giving me ten or twenty lashes, and after that would have paid me what he owed me; but you was so huffy, and called him so many names, that it made him mad, and so he vented all his spite against you upon my poor back, as soon as yours was turned, insomuch that I fear I shall never be my own man again." [2]

This episode, one of the most painful and dramatic in the whole painful story of the Knight of the Doleful Countenance, should be reflected upon by all those who, in one form or another, are called upon to assist in the process by which the world will pass from nationalism to supernationalism. Don Quixote believed that his authority and his lance were sufficient to force Haldudo to fulfill his obligations, and Andrew was the victim of his error. It would be unpardonable if, after the experience of the last post-war period, those who are

[1] Cervantes, *Don Quixote*, Part I, Chapter IV.
[2] *Ibid.*, Part I, Chapter XXXI (Motteux's translation).

called upon to build the new international organization should fall into the same error.

For in the international world there is no lack of Haldudos and Andrews, nor will there be for many a long year to come.

CHAPTER V

UPPER SILESIA

Within the great field of experimentation in national minority questions represented by Central Europe and the Balkans, the most complete and elaborate experiments unquestionably took place in Upper Silesia.

In Article 88 of the Treaty of Versailles it was stated that the inhabitants of the part of Upper Silesia whose frontiers were fixed in that article would "be called upon to indicate by a vote whether they wished to be attached to Germany or to Poland." Provisions concerning the holding of the plebiscite were contained in an Annex to Article 88. The plebiscite took place on March 20, 1921 — after the territory had been occupied by inter-Allied troops — under the auspices of an international commission of four members, American, British, French and Italian, to which the government of Upper Silesia had been entrusted. The results of the plebiscite were favorable to Germany, the count being, in round figures, 706,000 votes for that country and 479,000 for Poland. This was a tremendous disappointment to the Poles, who for reasons difficult to understand were certain not only that the plebiscite would go in their favor, but that the results would be taken as a basis for incorporating into Poland the *whole* of the plebiscite territory.

Certain circumstances then gave rise to the question whether the territory should be considered as an indivisible unity to be awarded as a whole to Germany or to Poland, according to the total results of the plebiscite (the British thesis), or whether, on the contrary, each municipal vote should be taken into account and, in fixing a frontier, every endeavor should be made to conform with the results of the

plebiscite in each municipality, and to cause the least possible harm to the industrial organization of the territory (the French thesis). Lloyd George, on behalf of the British Government, ardently defended the "unity" point of view, prompted, no doubt, by his justified annoyance over Korfanty's *coup de main*, which everyone believed to have been prepared and directed by the Polish Government itself. The French Government, for its part, defended no less fervently the "partition" thesis; and one of the main reasons why this controversy left such a deep and lasting impression on German-Polish relations with respect to Upper Silesia was the conviction, held at the time by almost everybody, and particularly by the German Government, that if the result of the plebiscite as a whole had been favorable to Poland, the Polish and French governments would have been the most ardent and determined advocates of the "unity" thesis, in order to insure that the whole of the territory remained in Polish hands. However this may be, it is only fair to remember that the "partition" thesis not only did not run counter to the provisions of the Versailles Treaty (as has sometimes been stated) but can almost be said to have been contemplated in that treaty. Paragraph 5 of the Annex to Article 88 stipulates, in fact, that:

> On the conclusion of the voting, the number of votes cast in each commune will be communicated by the Commission to the Principal Allied and Associated Powers, with a full report as to the taking of the vote and a recommendation as to the line which ought to be adopted as the frontier of Germany in Upper Silesia. In this recommendation regard will be paid to the wishes of the inhabitants as shown by the vote, and to the geographical and economic conditions of the locality.

In view of the impossibility of reconciling the British and French theses and, in consequence, of arriving at a solution, the Supreme Inter-Allied Council decided, on August 12, 1921, to submit the question to the Council of the League of Nations, which, after having entrusted a committee (composed of the

Belgian, Brazilian, Chinese and Spanish representatives) with the task of finding a solution, adopted unanimously in its session of October 12, 1921, the report and draft resolution prepared by that committee.

In this resolution the "partition" thesis prevailed, and as a result the Council fixed a frontier, endeavoring, in accordance with the spirit and letter of paragraph 5 of the Annex to Article 88 of the Versailles Treaty, to take into account both the municipal results of the plebiscite and the geographical and economic conditions of the locality. But in addition the resolution included a provision of fundamental importance which recommended that Germany and Poland should hold a special conference to reach agreement on such measures of an economic character, and such clauses concerning nationality, domicile and the protection of minorities, as would be necessary to remedy, during a transitional period of fifteen years, the evil political and economic consequences which any partition of territory must inevitably cause. As a result of this recommendation, the German and Polish governments negotiated a convention under the presidency of Mr. Felix Calonder, a former president of the Swiss Confederation, which was signed on May 15, 1922, in Geneva, and which was known during the last post-war period as the "Geneva Convention." It is a voluminous legal agreement, in six parts (General Measures, Nationality and Domicile, Protection of Minorities, Social Questions, Economic Questions and Mixed Commission and Arbitral Court) comprising 606 articles.

The third part of the convention undoubtedly constituted the most extensive and elaborate of all the legal agreements concerning minority protection, within or without the framework of the League of Nations. This was chiefly due to the fact that the so-called Geneva Convention possessed a reciprocal as well as a bilateral character, an attribute which the Minorities Treaties did not share. The latter were bilateral, in a

general sense, but not reciprocal. The provisions of the Geneva Convention applied to the German Government with respect to that part of Upper Silesia incorporated in Germany, and to the Polish Government with respect to that adjudicated to Poland.[1]

* * *

The measures provided in this third part of the convention were grouped in various chapters and sections with a total of ninety-five articles. If only in view of its size this part merits special consideration as an attempt to establish a genuine code of minority rights. I feel, however, that its size is by no means a virtue, and that the third part of the Geneva Convention proves the uselessness, if not the actual harmfulness, of what might be termed the methods of casuistry in handling questions of minority protection. The entire convention suffered from this evil. Those who directed the work of the Geneva Conference had excessive confidence in the virtue of the texts. The convention and the régime which it established for this transition period of fifteen years were characterized by rigidity, when what was needed was exactly the opposite — elasticity and flexibility which would have made it possible for the international organisms entrusted with the task of control and administration to deal with all the unforeseeable circumstances peculiar to a transition period, and at the same time to mold the new political, economic and social patterns of the territory into usable forms. This rigidity of the régime established by the convention continued throughout the whole fifteen years of its application. And I can say unhesitatingly that texts of a more general nature, applied in a more flexible manner, would in the course of time have done far more to

[1] Between Czechoslovakia and Poland a reciprocal convention was also concluded concerning Czech minorities in Poland and Polish minorities in Czechoslovakia. No intervention on the part of the League of Nations was contemplated and it was of small practical effect.

bring about a peaceable settlement of the difficulties of every type which such a partition of territory inevitably creates.

The convention not only made the Polish Minority Treaty applicable to German Upper Silesia but also contained a series of more or less detailed measures concerning civil and political rights, religion, education and the use of the minority language. These were preceded by two or three others, known as "general clauses," among which one is deserving of special mention.

This clause (Article 74 of the convention) states that the "question of whether a person does or does not belong to a racial, linguistic or religious minority may not be verified or disputed by the authorities." To include in the Geneva Convention this provision, with its clear and categorical terms, was a matter of wisdom. Such a statement may at first sight seem strange, but the fact is that the question of membership in minorities of even such clearly defined population groups as the Germans and the Poles was bound to give rise to polemics and discussions, chiefly concerning educational questions; and the provision in question did much to limit their scope. If doubts and misrepresentations were likely to arise with two such different population groups, it is easy to imagine the situation in cases (one of the most typical was that of the Macedonians) where the difference between majority and minority was scarcely appreciable. Whether in the direct and decisive form of Article 74 of the Geneva Convention, or in some other form which may be considered adequate, it will be most desirable in the future to state definitely that, in case of any doubt as to membership in a minority, the question must be decided by a subjective rather than an objective criterion, that is to say, by a free and spontaneous statement from the interested party.

* * *

The chapter of the convention devoted to civil and political rights merely develops, in a not always fortunate manner, the principle of equality between majority and minorities consecrated by the Minorities Treaties. The mention of specific cases, following on the establishment of a principle or a general rule, does little to help in dealing with those cases and merely prejudices others which are not mentioned. This is particularly the case when the measures guaranteeing negative equality are only relatively efficient; however emphatically equality may be stipulated between majority and minorities in matters concerning, for instance, admission to public posts, functions, honors, military ranks, etc., no one can reasonably expect that, in the transition period, either civil or military key posts will be entrusted to members of a minority. It cannot be said that on this point the situation in Upper Silesia was appreciably different from that in other European minority territories, nor that the very detailed measures of the Geneva Convention (giving one the impression of casuistical methods) were more effective than those of the Minorities Treaties.

It is, however, in the thirteen articles dedicated to religious freedom that the futility of what we have termed the methods of casuistry is most clearly seen. It is heightened by the fact that in Upper Silesia Germans and Poles rival each other in their devotion and zeal towards the Catholic Church, forming together one of the most intensely Catholic population groups of the whole of Europe, and by the additional fact that of all the Central European zones this territory has the lowest proportion of Jews. Nevertheless, it was felt necessary to include in the Geneva Convention a series of measures, some of a detailed nature, which obviously had no chance of being practically applied during the fifteen years they were in force.

* * *

The measures concerning education can almost be consid-

ered as a small code on minority education. They constitute Chapter IV of Section II of the third part of the convention, and the thirty-seven articles which they comprised were divided into five groups, dealing with private, elementary, professional and supplementary, intermediate and higher education, and general measures.

(*a*) The first of these sections not only states in solemn terms the right of the German and Polish minorities to "establish, manage, control and maintain, at their own expense, private schools or private educational establishments," but also contains a series of measures designed fully to guarantee this right and to protect it from any attacks which the authorities might feel tempted to launch against it.

(*b*) As regards primary education, it was stipulated that the creation of a state minority school (that is to say, a school in which instruction is given in the language of the minority), or of minority classes in a primary school, was to be obligatory if requested by persons responsible for the education of forty or more children belonging to a linguistic minority, who must be citizens of the state, living in the territory of the school district, of school age, and ready to attend the school in question. For minority instruction in language or religion to be compulsory in primary schools generally, requests had to be received from persons responsible for eighteen or twelve pupils, respectively, in any such school, belonging to a linguistic or religious minority. A minority school could not be closed down unless the number of pupils during three consecutive terms fell below that for which the school had been established, or, during one term, to less than half the number.

Among the provisions made for insuring the application and administration of these measures, those establishing an educational commission for each minority school or course of instruction are worthy of mention. The commission was charged with participating in the administration of the school or

course, and the majority of its members were to be chosen by the parents of the pupils, or by those legally responsible for the latter's education. The powers of these commissions, although they were not of an executive nature, were very wide and consisted in seeing that the premises were properly cared for and school supplies furnished, in apportioning money grants to the schools and in giving opinions regarding the appointment of instructors.

Another important guarantee was that the staff of a minority school should be recruited, *in principle*, from the minority itself, and should have a complete mastery of the minority language. This was all the more necessary in view of the fact that, as has already been said, lessons in such schools were taught in the minority language, except for lessons in German when that language figured as a subject in the school curriculum in German Upper Silesia, and lessons in Polish as taught in Polish Upper Silesia.

(*c*) The German and Polish authorities pledged themselves to organize intermediate and higher education for the minorities in the two parts of Upper Silesia, in accordance with the following rules, which are characteristic of what we might call the casuistical spirit of the convention:

(1) Establishment of minority schools in localities where a state school existed:

Intermediate education — request from parents of 200 children necessary.

Higher education — requests from parents of 300 children necessary.

(2) Establishment of parallel minority classes in the state schools:

Intermediate education — request from parents of 35 children necessary.

Higher education — request from parents of 30 children for lower classes and of 20 for upper ones.

(3) Minority courses in the minority language — request from parents of 25 children necessary.

(4) Minority courses in religion — request from parents of 18 children necessary.

The convention required that the management of these schools should be entrusted to a member of the minority, and that the staff should have a perfect knowledge of the minority language and be recruited from the minority. In order to avoid any practical difficulties which might have arisen through the strict fulfillment of this last requirement, the convention provided for a curious system of staff interchange between the two parts of the territory, which made it possible to appoint staff members from the German zone to German minority schools in the Polish zone, and vice versa.

(*d*) As the establishment of minority schools was made to depend on a petition formulated by those responsible for a specific number of children belonging to a linguistic minority,[1] the criterion for deciding the language of the child constituted the keystone of this minority edifice, so carefully built up by the convention.

Article 131 of the convention established a rule so categorical that it might at first sight have seemed sufficient to overcome all difficulty on this point.

> In order to determine the language of a pupil or child, account shall be taken only of the verbal or written statement of the person legally responsible for his education. This statement may not be questioned or disputed by the educational authorities. (*Translation.*)

Nevertheless, the vast majority of the innumerable and complex educational questions regarding Upper Silesia which arose during the later twenties were concerned with the interpretation of this clause. It is a clause of particular interest not only because of the number of questions to which it gave rise, but — what is possibly more important — because it occasioned perhaps the most fundamental of all controversies which oc-

[1] This demand applied mainly to primary schools, but was extended either directly or implicitly to schools for intermediate and higher education.

curred in Geneva over minority questions. So broad was the scope of this controversy that the German Government considered the framework of the League Council not sufficiently wide for it and decided to submit it, as a dispute with the Polish Government, to the Permanent Court of International Justice at The Hague, which pronounced judgment on the case in its Judgment No. 12 of April 26, 1928.

It would be worth while, if the limits and nature of the present study permitted, to give a detailed account of the examination of this question by the League Council up to its final settlement in 1931, so that the reader might gain some idea of the unsuspected twists and turns which minorities questions sometimes take and of the methods used by the Council to settle them. For the purpose in hand, however, a brief summary of the case must suffice.

In 1926, the Polish authorities suspected that a considerable proportion of the requests for the opening of minority schools contained false declarations concerning the language of the children. As the result of an investigation it was discovered that in many cases these suspicions were well founded, and at the beginning of the 1926–1927 term, admission to the minority schools was refused to all children in respect of whom the authorities considered that these false declarations had been made. This naturally roused an outcry among the minority, who immediately drew up a strong protest, stating that the investigation by the Polish authorities was in absolute contradiction to the provisions of Article 131 of the convention. The following questions presented themselves in this connection. Was the statement of the person responsible for the education of children (which according to this article formed the only basis for determining the language of the child, and concerning which all verification or dispute by the school authorities was expressly forbidden) to be considered as a subjective or an objective declaration? In this statement,

was the parent to give the child's mother tongue, or the language in which he wished his child to be educated? The controversy gave rise to practically uninterrupted discussion in the Council and before the Permanent Court of International Justice from 1927 to 1930. The Council, as from March, 1927, upheld the Polish thesis of *objectivity*. Article 131 referred to a declaration of fact as to which was the language of the child, but at the same time recognized the need for retaining the prohibition on all investigations by the educational authorities. In order to resolve the difficulty, it was decided to establish control by an educational expert, who was to be appointed by the Council itself, and to be at the disposal of the President of the Mixed Commission.[1] For the remarkable thing is that a situation arose which not only had been left out of account in drawing up Article 131, but which was probably the exact contrary of the hypothesis serving as a basis for the drafting of this article. As far as Polish Upper Silesia was concerned, what was undoubtedly feared, and what the article was intended to prevent, was that the authorities would coerce members of the German minority into refusing to say that German was the language of their children. Exactly the opposite occurred, however; as the Swiss expert was able to verify, thousands of parents stated that their children's mother tongue was German, when in fact they did not know a single word of that language. In other words, instead of a portion of the minority being obliged to figure in the total of the majority, a portion of the majority attempted fraudulently to pass itself off as belonging to the minority. If more account had been taken of the local situation in drawing up the convention, this apparently paradoxical development might have been foreseen. It was due partly to the economic structure of the territory, whereby owners and directors of factories and mines,

[1] A very distinguished member of the excellent teaching staff of the Swiss schools was appointed.

members of the German minority, were able to bring more direct and effective pressure to bear on the Polish workers than the Polish authorities themselves. Besides this, utilitarian considerations weighed heavily; in many cases a Polish father preferred to send his children to a school where they would learn German,[1] particularly as he knew that they would be able to speak Polish in the family and in other everyday contacts. The last factor of all, of which the German Government made much capital, and which considerably weakened the principle of objectivity, was the existence in the territory of a local dialect, which differed considerably from both the German and Polish languages, and which was very widely used, particularly among the working classes. It often happened that children up to six and seven years of age understood nothing but this dialect, and in their cases the statement referred to in Article 131, concerning the matter of determining whether German or Polish was the mother tongue, could hardly be of an objective character, as the father could only say which language he considered to be that of the family, and which he wished to be used for the education of his child.

As has been said, these and other arguments were brought up time after time during the interminable debates to which the controversy gave rise in the Council and before the Permanent Court of International Justice. The Council endeavored to find a practical solution based on the following four principles: (1) recognition of the objective character of the declaration; (2) retention of the entire prohibition on all verification or contradiction by the educational authorities; (3) declaration that it was undesirable to send children with no knowledge of German to minority schools; (4) examination on the spot, by a Swiss educational expert, of the children in respect of whom the Polish authorities stated that false decla-

[1] For the same reason that in Madrid, for instance, many parents sent their children to English, German or French schools.

rations had been made. Not being a Polish educational authority, this expert was not included in the ban laid down by the convention.

This system worked satisfactorily for a year, but fresh difficulties arose concerning the validity for the future of the results obtained from the examination by the expert in previous years. The German Government then decided to bring the question before the Court as a "dispute" with the Polish Government. The Court in its judgment of April 26, 1928, confirmed the objective character of the declaration, recognizing, however, that the declarant was entitled to a certain latitude in appraising the circumstances, though not to unlimited freedom of choice of the language in which education was to be given; at the same time it ratified the ban on the submission of the statement to any kind of "verification, dispute, pressure or hindrance" on the part of the authorities. Four judges dissented from this judgment, and two of them, Nyholm (Dutch) and Schücking (German), pointed out in their dissenting opinions the contradiction involved in recognizing the objective character of the declaration and at the same time of prohibiting any verification and dispute concerning it; the effect of this, in their opinion, was to give it a subjective character.

Notwithstanding the judgment of the Court, the question was not finally settled. The admission of children who had been rejected by the Swiss expert in previous years continued to create difficulties until, in 1931, the Council found it necessary to take the matter once again before the Court, this time in order to obtain an advisory opinion.

The use of the "minority" language — i.e., of German — in Polish Upper Silesia, and vice versa, was given by the Geneva Convention wider and more elaborate guarantees than those contained in the Minorities Treaties.

In the first place, the convention did not confine itself, as did

the treaties, to guaranteeing the free use of minority languages in private and business relations and to prescribing the concession of "adequate facilities" for its use before the courts. It extended the use of the minority language to the administrative sphere, and to all intents and purposes its provisions in this respect placed the two languages, German and Polish, on an equal footing in the whole of the plebiscited territory. These provisions applied to oral relations with the authorities; to written requests to which the authorities could reply in the official language (attaching a translation in the language of the minority if required by the interested party); to the deliberations of the municipal councils and departmental assemblies; and, for four years from the entry into force of the convention, to the discussions of the German and Polish provincial assemblies.

It is hardly necessary to say that the convention also most explicitly guaranteed equality between the two languages with respect to their use before the courts of justice, laying down very careful rules concerning the necessary translations or interpretations.

* * *

The really novel aspect of the Geneva Convention as far as the Minorities Treaties were concerned, was a provision regarding the methods of appeal which the two minorities could make, in the case of an infraction of this third part of the convention, and the procedure established to that end.

The convention placed two methods of appeal at the disposal of the members of the two interested minorities.

(1) The first was that of a direct approach to the Council of the League of Nations, by virtue of Article 147 of the convention. This article empowered the Council to "pronounce on all individual or collective petitions relating to the provisions of the present part [of the Convention] and directly addressed to it by members of a minority."

The inclusion of this article in the convention was rather unwise. In the first place, it was absurd to impose on a body such as the Council of the League of Nations the obligation to examine and decide on every petition sent in by a member of the minorities, especially since all such petitions would not necessarily denounce infractions of the convention. In the second place, the provision in question gave every opportunity to each of the two governments parties to the convention to make vexatious difficulties for the other and, incidentally, for the Council itself, by organizing the transmission of petitions *en masse* from the minority it was backing. And in practice this was much more dangerous than developments growing out of the individual and spontaneous initiative of members of the minorities.

The German Government acted in this respect with its accustomed thoroughness. In Polish Upper Silesia a powerful association, the *Deutscher Volksbund*, was soon formed, which made itself responsible for controlling and directing all the activities of the German minority and, more particularly, for the employment of the formidable weapon placed in its hands by Article 147 of the convention. The dependence of this association on the German Government was only thinly disguised, and it formed part of the large organization which the latter had established for its activities among the German populations outside Germany. The Polish Government never succeeded (or perhaps never even attempted) to utilize the Polish minority of German Upper Silesia in the way that the German Government used the German minority of Polish Upper Silesia. It would be mistaken and unjust, however, to impute this difference to the fact that the Polish minority of German Upper Silesia had less cause for complaint than the German minority of the Polish territory. In my opinion, the difference is accounted for by the lesser degree of efficiency of the Polish administration in organizing its activities among the Polish minority and in opposing those of the German Government

among the German minority. It is also only fair to recognize that Poland never seriously proposed to use the Polish minority as a political tool in its struggle against Germany, while Germany always looked on the German minorities as one of the most effective weapons for opposing the European order established in the Versailles Treaty and the other treaties terminating the war of 1914–1918.

The result was that in the later twenties, when German pressure on Upper Silesia was at its highest, the application of Article 147 led to intolerable and even ridiculous situations. This was not only because of the number of petitions concerning Upper Silesia which appeared on the agenda of each Council meeting,[1] but more particularly because of the insignificance of the questions with which most of them dealt. Petitions from fathers whose children were refused admittance to a minority school were, we felt, perfectly normal and justified, although it was absurd for the Council to have to deal, *in the first instance*, with these individual questions; and cases such as, for instance, that of a dispute between a policeman and a woman member of the minority who had been found throwing dirty water and refuse into the street, were, in my opinion, just so much waste of the Council's time.

On many occasions the German delegates themselves waxed indignant at the disgraceful results of the blanket obligation imposed on the Council by Article 147 of the convention, and as a consequence the German and Polish governments agreed to open negotiations in order to remedy this state of affairs. The negotiations — which took place in Paris in April, 1929, under the presidency of Mr. Adatci, who was Japanese Ambassador in France at the time as well as Council *Rapporteur* for minority questions — extended to other points in the procedure laid down by the convention, but unquestionably one of their most important results, if not the most important, was

[1] On one occasion, if I remember rightly, there were over fifteen.

that they put an end to the intolerable situation for which Article 147 had been responsible.

In general terms, and setting aside technical details, the outcome of the negotiations was a decision that the *Rapporteur* for minority questions should propose to the Council, in agreement with the Secretary General of the League, the removal from the agenda of those petitions presented under Article 147 which were not sufficiently important to justify their examination by the Council, and which could be dealt with by another method established in the convention, a method to be examined shortly.[1] This agreement was supplemented by another, which by reason of its special nature was not made public, and which was comprised in two letters to Mr. Adatci from the German and Polish governments respectively. By the terms of this latter agreement, the German Government promised not to raise objections to any proposals which the *Rapporteur* might submit to the Council for the removal from the agenda of petitions presented under Article 147.

When one remembers the difficulties caused by the unwise inclusion of Article 147 in the Geneva Convention, it must be acknowledged that the Council acted sensibly in introducing into the procedure for the application of the Minorities Treaties certain conditions of receivability for the petitions, and particularly in establishing and developing this procedure in the first instance before the Minorities Committees.

(2) The other method of appeal which was established by the Geneva Convention (Article 149 *et seq.*), and which was known among ourselves as a "local" one, was organized in three instances.

[1] The procedure was as follows: The petitions in question were placed on the provisional agenda of the Council, with a note explaining that the *Rapporteur* proposed their removal from the final agenda. If the Council on adopting the final agenda in the first session of each meeting, approved the *Rapporteur's* proposal, the petitions did not figure in the final agenda.

The first took place in the "Minorities Offices." Every member of the minorities could have recourse to these offices, which were established by each government for dealing with minority questions, "after administrative resources had been exhausted." The Minorities Office endeavored to settle directly with the interested authority the difficulty specified in the petition, but if unsuccessful, it passed on the matter to the President of the Mixed Commission, who after oral and written proceedings, would return it to the Minorities Office with his "opinion" concerning the best solution.

This recourse to the President of the Mixed Commission, who can be considered *grosso modo* as a second instance, merits some further explanation.

The Mixed Commission of Upper Silesia was the body made responsible by the convention for controlling the application of its provisions. It consisted of a German and a Polish national, with a president from a neutral country. For the fifteen years of its existence the President was Mr. Calonder, who had presided over the German-Polish conference which in 1922 drew up and adopted the convention. The Mixed Commission's powers were wide and covered the whole field of application of the convention.[1] In practice, however, a large, if not the largest, proportion of the time and work of its President and members was devoted to minority questions.

On the basis of the provisions of the convention, the President of the Mixed Commission established, as a preliminary to the statement of his "opinions," a procedure somewhat resembling the judicial one, in which the petitioner (i.e., the minority) and the Minorities Office (representing the government) assumed the character of two contending parties in a judicial trial. The procedure generally consisted, first, in an

[1] The convention applied to the most varied matters, not only political and administrative, but also social and economic, i.e., social insurance, trade unions and employers' associations, mines, water supply, electricity, railways, customs, post offices, telephones and telegraphs, financial questions, etc.

exchange of written explanations, followed by an appearance in court, when the petitioner would put forward his accusations, and the chief of the Minority Office, in the name of the government, would reply to them.

While the character of Mr. Calonder, and the integrity and devotion with which he performed his difficult task in Upper Silesia, always inspired me with the greatest respect, I was nevertheless of the firm opinion — which I repeatedly stated to my superiors — that this procedure, pervaded as it was by a legalistic and judicial spirit, was a serious political error and a constant threat to the success of the system established in the Geneva Convention for the purpose of dealing with the difficulties caused by the partition of Upper Silesia. Mr. Calonder's conception of his duties in minority matters was an essentially judicial one. His chief anxiety was to insure that each case should be the object of a complete and impartial "instruction," and then to have the legal point of view clearly stated in his "opinion" on the case; that is to say, his primary aim was to establish whether or not there had been an infraction of any of the provisions of the convention, and if so, to ascertain the nature of the infraction. By interpreting his mission in this way, he ignored the political aspect, which was the essential one. What was, in fact, necessary was to make it possible, during the transitory period of fifteen years, for the German minority of Upper Silesia adjudicated to Poland to live amicably with the Polish population, and more particularly with the Polish authorities. This could not be achieved by means of "opinions" solemnly condemning the Polish authorities, whenever it was possible to point to an act contrary to the convention. An essentially elastic and flexible procedure was needed, allowing of reasonable compromises — compromises whose chief merit must be that of settling questions in a practical way, with no winners or losers. The judicial procedure established by the President of the Mixed Commission was an

entirely inflexible one; with an integrity, devotion and impartiality which cannot be too greatly admired, and which earned universal respect, he strictly carried out the mission of a judge, but never that of a friendly mediator.

All honorable men and women have a horror of "compromises," when these imply the betrayal of basic principles of moral conduct; but not all compromises are of this nature. Both in life and politics, we are constantly being faced with problems which can be solved in a just and practical manner, and by means of perfectly honorable compromise settlements. In minority questions, this fact should be very carefully borne in mind, but unfortunately that was not done in the case of Upper Silesia.

There is, however, still another criticism to be considered. Even from a judicial point of view, the procedure established by the President of the Mixed Commission was not adequate for achieving its objective. It was not enough to define in the "opinion" the infraction for which the state authorities were responsible, together with the necessary measures for remedying it. This is analogous to the action of a judge when he pronounces sentence, but a judge is supported by the whole of the repressive apparatus of the state. The President of the Mixed Commission, having no such machinery to support his procedure, was obliged to have recourse to other methods in order to insure both the acceptance of his "opinions" by the respective authorities and the adoption of such measures as were recommended by him for remedying any proved infractions. These methods could only be those of persuasion and moral pressure, employed in the course of genuine negotiations. But the fact is that the introduction of a judicial procedure, in which the minority and the government of the state to which it belonged were placed on the strict footing of equality, as though they were parties in a lawsuit before a local court, made it quite impossible to put such methods into practice. It was never

easy to obtain concessions from the minority states — even when every cause for humiliation, however small, had been eliminated, and everything done to give the concession an appearance of spontaneity. But what was to be expected when the concession asked for appeared to everyone (including the nationalist elements, who were very powerful in all minority countries, and perhaps most of all in Poland) as the execution of a sentence in the nature of a "righteous judgment" dictated by an international organism, by virtue of a judicial procedure between the minority and the state?

The curious aspect of this situation is that the President of the Mixed Commission was himself perfectly well aware that what he termed "settling a matter amicably" was preferable to giving an "opinion" of a strictly juridical nature. This was the purport of his admirable statement on the occasion of Mr. Morawski's entering the Mixed Commission as a Polish member on February 18, 1929, a statement which, on the request of the President himself, was inserted in the German-Polish Agreement concluded at Paris on April 6, 1929. But even from this statement it was evident that for Mr. Calonder, whether it was a question of reaching a friendly agreement, or of giving an "opinion" (which in his eyes was really equivalent to passing sentence), each case from the first assumed the form of a lawsuit, with the minority and the government (i.e., the very government which had jurisdiction over the minority) as the parties. And as a result of this lack of flexibility, it was impossible for him to obtain from both sides the degree of moderation necessary to insure an amicable settlement.

In these circumstances, the opinion given by the President of the Mixed Commission did not, in a large number of cases, produce a solution of the controversy, and on its being rejected by the competent authority, the minority, by virtue of the right conferred on it by Article 149 of the convention, would appeal to the Council of the League of Nations. Then would

begin a long and difficult struggle sustained and drawn out not by the importance of the question at issue, which was almost always insignificant, but by the fact that in being brought before the Council the case acquired all the characteristics of a question of prestige — between the following three authorities: The German Government,[1] whose representative in the Council supported, with the insistence and tenacity peculiar to his type of diplomacy, the legalistic thesis usually upheld in the "opinion" of the President of the Mixed Commission;[2] the Polish Government which, in order to justify the rejection of this "opinion" by its own authorities in the second instance, did everything possible to insure that the solution approved by the Council should not be exactly the same as that put forward by the President; and lastly, the President of the Mixed Commission himself, whose assent, if his susceptibilities were not to be wounded and — as would have been more serious — his prestige and moral authority impaired, was essential for reaching any compromise formula which did not coincide with his own legalistic solution.

Under these conditions, the task of the *Rapporteur*, and of the Minorities Section which was responsible for assisting him in the negotiations, was by no means easy; it was in fact sometimes an exhausting one — particularly when the questions were of so little account as to contain scarcely sufficient material for building up a compromise. In such cases the work involved was merely a matter of wearisome drafting. Time and again solutions which had been continuously rejected during the course of days of negotiation were accepted at the last minute (often in the early hours of the day set aside by the Council for examining the question) after a minor change of

[1] Before the entry of Germany into the League of Nations practically no minority questions concerning Upper Silesia were ever brought before the Council.

[2] The practical considerations here discussed refer to the application of the convention, and the fact should therefore be noted that the vast majority of the petitions and questions placed before the Council were brought before it by the *Deutscher Volksbund* against the Polish authorities.

wording, which, while it did not modify in the very slightest the fundamentals of the proposal, was apparently possessed of miraculous powers for preserving the prestige of the German or the Polish delegation! I well remember one particular occasion when we were trying to obtain Polish acceptance of a final change in the text of a report. Mr. Zaleski, Polish Foreign Minister at the time, was attending an official reception which, with his customary kindness and consideration, he left in order to examine and discuss the new text with me. As the weather was very hot, he was glad of an excuse to take a walk through the cool night air of the Geneva streets, and there in the light of a street lamp we established the final text of the report to be submitted the following day for the Council's approval. Needless to say, in order to bring the matter to completion it was necessary to obtain the approval of the *Rapporteur*, who in that period of acute difficulty over Upper Silesia questions, was the Japanese representative; this was little more than a formality however, first, because the Minorities Section enjoyed his complete confidence, and, secondly, because he never failed to approve any formula to which the German and Polish governments and the President of the Mixed Commission had agreed. Always smiling and cordial, never showing the slightest sign of impatience, Mr. Sato[1] at times received me late at night, enveloped in magnificent kimonos, in order to be kept informed of the course of the negotiations; it was the practice of the Section only to ask for his personal intervention when we were faced with an insuperable difficulty, and this was not often.

* * *

I have felt it necessary to give these details, as Upper Silesia constitutes the only precedent for a system to which recourse

[1] Subsequently appointed Ambassador of his country to Moscow.

may conceivably be had in the future when dealing with political difficulties created by the existence of national minorities, or other problems of a similar nature. Its outstanding feature consists in the despatch to the territory in question of an international agent, entrusted with the task of settling the difficulties on the spot. If a system of this kind should ever again be employed, nothing is more likely to contribute to its success than a careful and objective analysis of the first experiment carried out in Upper Silesia, of which I have given a rapid and superficial summary in the preceding pages.

APPENDIX

REPORT OF WORK OF THE LEAGUE OF NATIONS IN RELATION TO PROTECTION OF MINORITIES PREPARED BY A COMMITTEE CONSTITUTED BY THE COUNCIL OF THE LEAGUE IN ITS RESOLUTION OF MARCH 7, 1929

REPORT OF THE COMMITTEE INSTITUTED BY THE COUNCIL RESOLUTION OF MARCH 7TH, 1929[1]

(Document C.C.M. 1.)

CONTENTS

[1] Reproduced from League of Nations, *Official Journal*, Special Supplement No. 73, "Documents Relating to the Protection of Minorities by the League of Nations" (Published in accordance with the Council Resolution of June 13th, 1929), Geneva, 1929, pp. 42–64.

INTRODUCTION

The representative of Japan, as Rapporteur, and the representatives of Great Britain and Spain, appointed by the Council to co-operate in the preparation of the present report, held a first meeting on March 8th, 1929, at Geneva. They met again in London from April 29th to May 4th.

The Committee has received a certain number of suggestions contained in memoranda sent to it by the Governments of the following countries: Austria, Bulgaria, China, Czechoslovakia, Estonia, Germany, Greece, Hungary, Latvia, Lithuania, Netherlands, Poland, Roumania, Kingdom of the Serbs, Croats and Slovenes, Switzerland.

It takes this opportunity of thanking these Governments for the help they have thus given it in performing a very difficult task.

The Committee has also taken note of various communications from a certain number of associations and organisations; it desires to thank these also for the suggestions they have made.

In the annexes to the present report will be found copies of the communications received from the Governments (Annex I), together with a list of those emanating from various associations and organisations (Annex II).[1]

PART I

I. International Instruments Containing Clauses Placed Under the Guarantee of the League of Nations

The international instruments at present in force containing stipulations for the protection of minorities placed under the guarantee of the League of Nations may be classified as follows:

1. *"Minorities" Treaties signed at Paris during the Peace Conference*

(1) Treaty between the Principal Allied and Associated Powers and Poland, signed at Versailles on June 28th, 1919.

(2) Treaty between the Principal Allied and Associated Powers and the Kingdom of the Serbs, Croats and Slovenes, signed at St. Germain on September 10th, 1919.

(3) Treaty between the Principal Allied and Associated Powers and Czechoslovakia, signed at St. Germain on September 10th, 1919.

[1] The two annexes have not been included by the author in this Appendix to his study. — Ed.

(4) Treaty between the Principal Allied and Associated Powers and Roumania, signed at Paris on December 9th, 1919.

(5) Treaty between the Principal Allied and Associated Powers and Greece, signed at Sèvres on August 10th, 1920.

2. *Special Chapters inserted in the General Treaties of Peace*

(1) Treaty of Peace with Austria, signed at St. Germain-en-Laye on September 10th, 1919 (Part III, Section V, Articles 62 to 69).

(2) Treaty of Peace with Bulgaria, signed at Neuilly-sur-Seine on November 27th, 1919 (Part III, Section IV, Articles 49 to 57).

(3) Treaty of Peace with Hungary, signed at Trianon on June 4th, 1920 (Part III, Section VI, Articles 54 to 60).

(4) Treaty of Peace with Turkey, signed at Lausanne on July 24th, 1923 (Part I, Section III, Articles 37 to 45).

3. *Special Chapters inserted in other Treaties*

(1) German-Polish Convention on Upper Silesia, dated May 15th, 1922 (Part III).

(2) Convention concerning the Memel Territory, dated May 8th, 1924 (Article 11, and Articles 26 and 27 of the Statute annexed to the Convention).

4. *Declarations made before the Council of the League of Nations*

(1) Declaration by Albania, dated October 2nd, 1921.

(2) Declaration by Estonia, dated September 17th, 1923.

(3) Declaration by Finland (in respect of the Aaland Islands), dated June 27th, 1921.

(4) Declaration by Latvia, dated July 7th, 1923.

(5) Declaration by Lithuania, dated May 12th, 1922.

II. Origin and Purpose of the Minorities Treaties

The origin and purpose of these treaties is clearly and authoritatively explained in the letter addressed by M. Clemenceau on June 24th, 1919, to M. Paderewski, when he communicated to him in its final form the text of the Polish Treaty.[1] The relevant passages of the text of that letter are as follow:

[1] Minutes of the third meeting of the second session of the Council of the League of Nations, held in London on February 12th, 1920, page 57.

In formally communicating to you the final decision of the Principal Allied and Associated Powers in this matter, I should desire to take this opportunity of explaining in a more formal manner than has hitherto been done the considerations by which the Principal Allied and Associated Powers have been guided in dealing with the question.

1. In the first place, I would point out that this Treaty does not constitute any fresh departure. It has for long been the established procedure of the public law of Europe that, when a State is created, or even when large accessions of territory are made to an established State, the joint and formal recognition by the Great Powers should be accompanied by the requirement that such State should, in the form of a binding international convention, undertake to comply with certain principles of government. This principle, for which there are numerous other precedents, received the most explicit sanction when, at the last great assembly of European Powers — the Congress of Berlin — the sovereignty and independence of Serbia, Montenegro, and Roumania were recognised.

. . . . . .

2. The Principal Allied and Associated Powers are of opinion that they would be false to the responsibility which rests upon them if on this occasion they departed from what has become an established tradition. In this connection, I must also recall to your consideration the fact that it is to the endeavours and sacrifices of the Powers in whose name I am addressing you that the Polish nation owes the recovery of its independence. It is by their decision that Polish sovereignty is being re-established over the territories in question and that the inhabitants of these territories are being incorporated in the Polish nation. It is on the support which the resources of these Powers will afford to the League of Nations that, for the future, Poland will to a large extent depend for the secure possession of these territories. There rests, therefore, upon these Powers an obligation, which they cannot evade, to secure in the most permanent and solemn form guarantees for certain essential rights which will afford to the inhabitants the necessary protection whatever changes may take place in the internal constitution of the Polish State.

It is in accordance with this obligation that Clause 93 was inserted in the Treaty of Peace with Germany. This clause relates only to Poland, but a similar clause applies the same principles to Czechoslovakia, and other clauses have been inserted in the Treaty of Peace with Austria and will be inserted in those with Hungary and with Bulgaria, under which similar obligations will be undertaken by other States which under those Treaties receive large accessions of territory.

The consideration of these facts will be sufficient to show that, by the requirement addressed to Poland at the time when it receives in the most solemn manner the joint recognition of the re-establishment of its sovereignty and independence and when large accessions of territory are being assigned to it, no doubt is thrown upon the sincerity of the desire of the Polish Government and the Polish nation to maintain the general principles of justice and liberty. Any such doubt would be far from the intention of the Principal Allied and Associated Powers.

3. It is indeed true that the new Treaty differs in form from earlier Conventions dealing with similar matters. The change of form is a necessary consequence and an essential part of the new system of international relations which is now being built up by the establishment of the League of Nations. Under the older system the guarantee for the execution of similar provisions was vested in the Great Powers. Experience has shown that this was in practice ineffective, and it was also open to the criticism that it might give to the Great Powers, either individually or in combination, a right to interfere in the internal constitution of the States affected which could be used for political purposes. Under the new system, the guarantee is entrusted to the League of Nations. The clauses dealing with this guarantee have been carefully drafted so as to make it clear that Poland will not be in any way under the tutelage of those Powers who are signatories to the Treaty.

I should desire, moreover, to point out to you that provision has been inserted in the Treaty by which disputes arising out of its provisions may be brought before the Court of the League of Nations. In this way differences which might arise will be removed from the political sphere and placed in the hands of a judicial court, and it is hoped that thereby an impartial decision will be facilitated, while at the same time any danger of political interference by the Powers in the internal affairs of Poland will be avoided. . . .

Further information is given in a speech by President Wilson on May 31st, 1919, at a plenary session of the Peace Conference: [1]

We are trying to make a peaceful settlement, that is to say, to eliminate those elements of disturbance, so far as possible, which may interfere with the peace of the world, and we are trying to make an equitable distribution of territories according to the race, the ethnographical character of the people inhabiting those territories.

And back of that lies this fundamentally important fact that, when the decisions are made, the Allied and Associated Powers guarantee to maintain them. It is perfectly evident, upon a moment's reflection, that the chief burden of their maintenance will fall upon the greater Powers. The chief burden of the war fell upon the greater Powers, and if it had not been for their action, their military action, we would not be here to settle these questions. And, therefore, we must not close our eyes to the fact that, in the last analysis, the military and naval strength of the Great Powers will be the final guarantee of the peace of the world.

In those circumstances, is it unreasonable and unjust that, not as dictators but as friends, the Great Powers should say to their associates: "We cannot afford to guarantee territorial settlements which we do not believe to be right, and we cannot agree to leave elements of disturbance unremoved, which we believe will disturb the peace of the world"?

Take the rights of minorities. Nothing, I venture to say, is more likely to disturb the peace of the world than the treatment which might in certain

[1] H. W. V. Temperley (ed.), *A History of the Peace Conference of Paris* (London: H. Frowde, Hodder & Stoughton, 1920–24), Vol. V, p. 130.

circumstances be meted out to minorities. And, therefore, if the Great Powers are to guarantee the peace of the world in any sense, is it unjust that they should be satisfied that the proper and necessary guarantee has been given? . . .

Covenant of the League of Nations

It was in the discussion of the Covenant of the League of Nations that the first proposals were made for dealing with this question. In one of the earlier drafts prepared by President Wilson, he had inserted a clause as follows:

> The League of Nations shall require all new States to bind themselves as a condition precedent to their recognition as independent or autonomous States to accord to all racial or national minorities within their several jurisdictions exactly the same treatment and security, both in law and in fact, that is accorded the racial or national majority of their people.[1]

Here, it will be seen, we have clearly laid down the principle on which the Minorities Treaties were eventually to be based. In a later draft, also emanating from President Wilson, an additional article is proposed:

> Recognising religious persecution and intolerance as fertile sources of war, the Powers signatory hereto agree, and the League of Nations shall exact from all new States and all States seeking admission to it, the promise that they will make no law prohibiting or interfering with the free exercise of religion, and that they will in no way discriminate, either in law or in fact, against those who practice any particular creed, religion or belief whose practices are not inconsistent with public order or public morals.[2]

These articles were not included in the agreed draft brought forward by the American and British delegations (the Hurst-Miller draft), which is the basis of the Covenant.

At a later stage, a new clause was proposed by Lord Robert Cecil:

> Recognising religious persecution and intolerence as fertile sources of war, the High Contracting Parties agree that political unrest arising therefrom is a matter of concern to the League and authorise the Executive Council, wherever it is of opinion that the peace of the world is threatened by the illiberal action of the Government of any State towards the adherents of any particular creed, religion or belief, to make such representations or take such other steps as will put an end to the evil in question.[3]

[1] David Hunter Miller, *The Drafting of the Covenant* (New York: G. P. Putnam's Sons, 1928), Vol. II, p. 91.

[2] *Ibid.*, p. 105.

[3] *Ibid.*, p. 555.

This clause was at first supported by President Wilson and was the subject of discussion in the Commission and in a sub-committee, but was eventually rejected by a very large majority. It is to be noted that, in the final division, neither the British nor the American delegation voted for its inclusion. These proposals are of some importance in connection with similar proposals which have been made at a later period. They show that, in the original drafting of the Covenant, full consideration had been given to the suggestion that the principle of religious toleration and racial equality should be included in the Covenant of the League itself, but that on further consideration this was found impossible, or at any rate undesirable.

If, however, all provisions of this nature were to be excluded from the text of the Covenant, the natural course would be, following the precedent of 1878, to include such provision as might appear desirable in the treaties by which the new States were constituted, and by which their territories were determined. But although the question was discussed by the Commissions dealing with these questions, this procedure was not, in fact, adopted, and the matter was left to be dealt with at a later stage. This decision was to have an importance which probably at the time was scarcely realised. Under what may be called the more normal procedure, such provisions as it might seem necessary to require regarding the protection of minorities would have been inserted in the main Treaties of Peace containing the territorial settlement; these clauses would have followed immediately after the territorial clauses, in the same place as those dealing with the right of option, and in this case the immediate and necessary relationship of the obligations imposed with the transference of territory would have been obvious and unmistakable.

It was not until May 1919 that the work of drafting the provisions to be embodied in the Minorities Treaties was definitely taken in hand. The first of these treaties to be drafted was the Treaty with Poland, which thus became the occasion on which the principles at issue were discussed. From the beginning it was intended that the treaties for the different States concerned should be as nearly as possible identical; the Polish Treaty was the pattern to which the others — including the analogous provisions in the Treaties of St. Germain, Neuilly, Trianon and Lausanne — afterwards conformed.

It must at once be placed on record that it was no part of the purpose of the authors of the treaties to set out principles of government which should be of universal obligation. They never considered or professed to consider the general principle of religious toleration as applicable to all States of the world, nor did they lay down any general principles of universal application for the government of

alien peoples who might be included within the territory or the colonial dominions of all States. Anything of the kind would have been quite outside the scope and powers of the Peace Conference; if anything of this kind had been done, it could only have been in connection with the drafting of the Covenant of the League of Nations, and as we have seen, it was there deliberately rejected. What the Conference had to deal with was a number of problems which were purely local, which arose only in certain specified districts of Europe, but which at the same time, in view of the political conditions of the moment, were serious, urgent and could not be neglected.

Sanctions for the Treaties

The most important innovation in these treaties as compared with the similar obligations imposed in the past is to be found in the guarantee of the League of Nations. Practical experience had shown that the older system was both unsuitable and ineffective. The reason for this was that the obligations of, for instance, the Kingdom of Roumania were undertaken to those States which were signatories to the Treaty of Berlin. This had two results. In the first place, it would give to any individual one of these States, if it so desired, the right to intervene in a hostile spirit in the international affairs of the Kingdom. At the same time, no provision had been made for impartial consideration of the complex points which might easily arise as to whether in fact the provisions of the treaty were being observed. Experiences under the previous treaty arrangements proved that it was necessary to make provision for the impartial determination as to whether or not there had been violation of the treaties. For the first time, this was rendered possible by the institution of the League of Nations and the proposed establishment of the Court of International Justice.

Secondly, if it were the case that a violation of the treaties had been established, it was most unsatisfactory that the right and obligation to enforce compliance should be left in the hands of individual States. Ultimately, under the older system there was no provision for the enforcement of contractual obligations except acts of force culminating in war, a fact which on the one hand went far to render the stipulations ineffective and on the other involved the grave danger that one of the contracting parties might be tempted to use the rights under these clauses, as might well have been done, with the ultimate object of securing political advantages for itself.

Here, again, it was natural to turn for assistance to the League of Nations so that, if the violation of the treaty had been fully estab-

lished, the responsibility for compelling compliance should be transferred from the individual State to the League, a body which would have no private and special interests to serve.

The chief question was whether the right to appeal for protection to the Council of the League and to the Court of International Justice should be confined to States, or whether it would be open to minorities themselves, as corporate entities or to individuals belonging to minorities, to appear before and invoke the jurisdiction of the Permanent Court. Certain delegations proposed a draft which, while leaving the final determination on this point to the Court of International Justice itself, would in effect have left it open to the Court to allow minorities or individuals to appear before it as principals in the case. Other delegations proposed a draft which made it clear that it was only States Members of the Council which could appeal to the jurisdiction of the Court. The difference was fundamental. The decision was given in favour of the restrictive right, since, in a previous discussion of the general principle involved, the view had been taken that nothing should be done which could give the appearance of making a minority organization politically independent of the State or of giving such a minority political rights distinct from those of the majority.

Another point of debate was whether any Member of the League of Nations should have the right to bring to the attention of the Council of the League any non-observance of the treaties, or whether this right should be confined to those Members of the League which are represented on the Council. Here again, the decision was taken in favour of the more restrictive view.

In determining the part to be assigned to the League of Nations in the administration of these treaties, the authors of the treaties were hampered in their proposals by the fact that the League of Nations was not itself at that time in existence and could not therefore be consulted. It would, moreover, clearly have been improper to have laid down any binding rules as to the procedure which the League itself might think it well to adopt; it had always to be remembered that, though the signatory States could agree to ask the League of Nations to undertake the guarantee, they could not require or compel it to do so. It would, when the time came, be quite open to the League either to refuse to accept the guarantee or to make the acceptance conditional on certain alterations in the provisions of the treaty.

The principles on which this part of the treaty is drafted are, however, clearly indicated. The basis of the whole action is that it is limited to treaty obligations. The sole duty of the League is to

watch over the execution of these treaty obligations. The organ of the League appointed by the treaties for this purpose is the Council, but the Council can only act when one of its members takes the initiative on its own responsibility and invokes the Council's aid as guarantor on the ground that there has been a violation or that there is danger of violation of one or more clauses of the treaty. It is therefore for the individual States Members of the Council to watch the execution of the treaties and to take the initial step, if necessary. Without the express consent of the parties to the treaty, the League can neither relieve the Members of the Council of this responsibility nor extend or transfer it to any other body.

III. Analysis of the Treaties

The engagements contained in the Treaties may be grouped under two headings, the first comprising undertakings which are to some extent common to the different countries which have accepted the régime of protection of minorities by the League; the second, special engagements concerning minorities whose situation is more or less unique.

The Minorities Treaties contain identical provisions concerning the League's guarantee, and these provisions will be specially examined in one of the following chapters.

1. UNDERTAKINGS COMMON TO ALL CASES

In the first place, the Minorities Treaties contain stipulations regarding the acquisition of nationality. These stipulations provide, in principle, that the nationality of the newly created or enlarged country shall be acquired: (*a*) by persons habitually resident in the transferred territory or possessing rights of citizenship there when the Treaty comes into force; (*b*) by persons born in the territory of parents domiciled there at the time of their birth, even if they are not themselves habitually resident there at the coming into force of the treaty.

The treaties also provide that nationality shall be *ipso facto* acquired by any person born in the territory of the State, if he cannot prove another nationality. The treaties further contain certain stipulations concerning the right of option.

The States which have signed the Minorities Treaties have undertaken to grant all their inhabitants full and complete protection of life and liberty, and recognise that they are entitled to the free exercise, whether in public or in private, of any creed, religion or belief

whose practices are not inconsistent with public order or public morals.

As regards the right to equality of treatment, the Minorities Treaties lay down the following general principles: (*a*) equality of all nationals of the country before the law; (*b*) equality of civil and political rights; and (*c*) equality of treatment and security in law and in fact.

Moreover, the treaties expressly stipulate that differences of race, language or religion shall not prejudice any national of the country as regards admission to public employments, functions and honours, or to the exercise of professions and industries. It is also provided that nationals belonging to minorities shall have an equal right to establish, manage and control, at their own expense, charitable, religious or social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.

As regards the use of the minority language, States which have signed the treaties have undertaken to place no restriction in the way of the free use by any national of the country of any language, in private intercourse, in commerce, in religion, in the Press or in publications of any kind, or at public meetings. Those States have also agreed to grant adequate facilities to enable their nationals whose mother-tongue is not the official language to use their own language, either orally or in writing, before the Courts. They have further agreed, in towns and districts where a considerable proportion of nationals of the country whose mother-tongue is not the official language of the country are resident, to make provision for adequate facilities for ensuring that, in the primary schools (the Czechoslovak Treaty refers to "instruction" in general), instruction shall be given to the children of such nationals through the medium of their own language, it being understood that this provision does not prevent the teaching of the official language being made obligatory in those schools.

The treaties finally provide that, in towns or districts where there is a considerable proportion of nationals of the country belonging to racial, religious or linguistic minorities, these minorities will be assured an equitable share in the enjoyment and application of sums which may be provided out of public funds under the State, municipal or other budgets for educational, religious or charitable purposes.

2. SPECIAL UNDERTAKINGS

In addition to these general engagements, the Minorities Treaties establish a number of special rights in favour of certain minorities,

viz., the Jewish minority (Greece, Poland, and Roumania), the Valachs of Pindus (Greece), the non-Greek monastic communities of Mount Athos (Greece), the Moslem minorities in Albania, Greece and the Kingdom of the Serbs, Croats and Slovenes, the Czechlers and Saxons in Transylvania (Roumania), and the people of the Ruthene territory south of the Carpathians (Czechoslovakia).

IV. Stipulations Other Than the Minorities Treaties and Clauses Relating to the Protection of Minorities, Contained in Certain Treaties of Peace

In addition to the stipulations contained either in certain Treaties of Peace or in the Minorities Treaties, various countries have accepted, for the protection of minorities, provisions placed under the guarantee of the League of Nations.

In December 1920, the First Assembly recommended the Baltic and Caucasian States and Albania, in the event of their being admitted to the League, to take the necessary measures to enforce the principles of the Minorities Treaties. The Assembly also requested those States to arrange with the Council the details required to carry this object into effect.

In accordance with the recommendation of the Assembly, the Governments of Albania, Estonia, Latvia, and Lithuania, which were admitted as Members of the League in 1920 and 1921, made declaration before the Council concerning the protection of minorities in their respective countries. Finland, after undertaking, as explained hereafter, by its declaration of June 27th, 1921, to afford certain guarantees to the population of the Aaland Islands for the preservation of their language, culture, and local Swedish traditions, furnished the Council that same year with information regarding the position of other racial, religious, and linguistic minorities in Finland, and the guarantees afforded them under the constitution and laws of the country. The Council took note of this information by a resolution dated October 2nd, 1921, which was communicated to the Assembly for its information.

Albania. — The Declaration made by the Albanian representative at the session on October 2nd, 1921, which was ratified by the Albanian Government on February 17th, 1922, contains provisions similar to those embodied in the Minorities Treaties. Like the provisions of the Minorities Treaties, they were placed by a resolution of the Council, under the guarantee of the League of Nations "so far as they affected persons belonging to racial, religious or linguistic minorities."

Lithuania. — The Declaration made by the Lithuanian Repre-

sentative on May 12th, 1922, contains similar provisions, and the Council resolution placing them under the guarantee of the League of Nations under the same conditions as the provisions of the Minorities Treaties came into force on December 11th, 1923.

As regards the Memel Territory, the Lithuanian Government undertook, under the Paris Convention of May 8th, 1921, to apply this Declaration to the minorities in the Memel Territory, with the exception of the paragraph relating to the use of the minority languages in the Courts. The reason for this exception was that, under Article 27 of the Statute of the Memel Territory, annexed to the Convention, both the Lithuanian and German languages were recognised as the official languages of the Territory.

Latvia. — Under the Declaration made on July 7th, 1923, by the Latvian representative as a result of the negotiations between his Government and the Council, the latter has the right to take up the question anew and to re-open the negotiations if the situation of the minorities in Latvia does not appear to it to correspond to the general principles laid down in the various so-called Minorities Treaties. The Latvian Government can, on its side, also demand that the negotiations should be re-opened. It further agrees to the provision that those petitions which may be addressed to the League of Nations concerning the situation of persons belonging to minorities and which are recognised as being admissible should be transmitted to it, and that these petitions, together with such observations as the Latvian Government may desire to present, should be communicated for information to the Members of the Council. The Latvian Government also accepted in principle the obligation to furnish the Council with any information which it may desire, should one of its Members bring before it any question relating to the situation of persons belonging to minorities in Latvia. In case of a difference of opinion on questions of law or of fact concerning the declaration made on July 7th, 1923, by its representative, the Latvian Government and the Council have the right to ask for the question to be referred to the Permanent Court of International Justice for an advisory opinion.

Estonia. — On September 17th, 1923, Estonia assumed similar obligations in regard to the protection of minorities.

Apart from the obligations thus assumed by various countries upon their admission to the League of Nations, the latter gave its guarantee in respect of the enforcement of certain provisions adopted in consequence of the cession or division of various territories. Cases in point are the Aaland Islands, the sovereignty over which was assigned to Finland in 1921; the Memel Territory, which was placed under the sovereignty of Lithuania in 1922; and Upper Silesia, in

regard to which the German-Polish Convention of May 15th, 1922, contains provisions for the protection of minorities, guaranteed by the League of Nations.

Finland (The Aaland Islands). — By her Declaration of June 27th, 1921, Finland undertook, in regard to the Aaland Islands, to insert in the near future in the Law for the autonomy of the Aaland Islands of May 7th, 1920, certain guarantees to ensure the preservation of the Swedish language, culture and local traditions. The Council was to see that the guarantees provided were duly observed. Finland was to transmit to the Council, together with its own observations, any complaints or claims by the Aaland Landsting in regard to the application of these guarantees, and the Council could, in case the question was of a legal nature, consult the Permanent Court of International Justice.

Upper Silesia. — As regards Upper Silesia, the third part of the German-Polish Convention signed at Geneva on May 5th, 1922, contains, in its first division, a synoptic table reproducing on one side Articles 1, 2, 7, 8, 9 (paragraphs 1 and 2), 10, 11 and 12 of the Polish Minorities Treaty of June 28th, 1919, which Poland undertook to apply in the Polish part of the plebiscite territory; on the other side are shown the same provisions, which Germany accepted for a transitional period of fifteen years in the German part of this territory. The provisions relating to the League of Nations guarantee (Article 72) are the same as those contained in Minorities Treaties; it is laid down that the general procedure for the examination of petitions is applicable to petitions relative to the situation of minorities in Upper Silesia, coming from persons not members of a minority. A special procedure is, in fact, provided, as will be shown later, for petitions coming from persons belonging to a minority.

Under division II of the same part of the Convention, Germany and Poland agree, without prejudice to the provisions of division I, for a period of fifteen years, upon more detailed stipulations concerning civil and political rights, religion, education, the official language of the Administration and the language employed in the Courts of Law.

Finally, division III of the third part of the Convention contains a stipulation not embodied in any Minorities Treaty, conferring upon persons belonging to a minority the right to submit petitions to the Council of the League of Nations. Explicit provisions indeed establish a right of petition to the Council and to a local Minorities Office. We will not enter here into the details of these provisions, which were agreed upon between the two contracting parties. We would merely emphasise that the two parties judged it expedient to adopt special

provisions giving to persons belonging to the minorities a right of petition to the Council, after having included in their Convention the stipulations of the Minorities Treaties regarding the League of Nations guarantee and the exercise of this guarantee, because such a right was not conferred under any of the Minorities Treaties.

This special procedure for the protection of minorities in Upper Silesia must not be confused with the general procedure of the Council for the protection of minorities in the countries which have accepted stipulations to this effect. The three following chapters of the present report refer solely to this general procedure.

PART II

I. The Council's Agreement to the Placing of the Treaty Stipulations Concerning the Protection of Minorities Under the Guarantee of the League of Nations: The Nature and Limits of this Guarantee

As we pointed out above the clauses relating to the protection of minorities contained in certain Treaties of Peace and the Minorities Treaties were negotiated independently of the League of Nations. Once the necessary ratifications had been obtained, the stipulations concerning the protection of minorities were submitted to the Council, which had to decide whether it would or would not accept the mission entrusted to it. In each case the Council accepts this mission by a formal decision, under which the stipulations relating to the protection of minorities "so far as they affect persons belonging to racial, linguistic or religious minorities" are placed under the guarantee of the League of Nations.

The stipulations of the Treaty concluded between the United States of America, the British Empire, France, Italy and Japan of the one part, and Poland of the other part, were the first to be placed, by the Council's resolution of February 13th, 1920, under the guarantee of the League of Nations. These stipulations were examined "in conjunction with the covering letter" addressed to M. Paderewski by the President of the Peace Conference on June 24th, 1919, and, as a result of its examination, the Council decided that the League of Nations could agree to give its guarantee. Subsequently, by various resolutions worded in the same way as that which it had adopted with regard to the stipulations of the Polish Minorities Treaty, the Council placed under the guarantee of the League of Nations the stipulations of the Treaties concerning Minorities in Austria (October 27th, 1920), Bulgaria (October 27th, 1920), Czechoslovakia (November 29th, 1920), Kingdom of the Serbs,

Croats and Slovenes (November 29th, 1920), Hungary (August 30th, 1921), Roumania (August 30th, 1921), Greece (September 26th, 1924), and Turkey (September 26th, 1924).

After deciding to place under the guarantee of the League of Nations the stipulations relative to the protection of minorities in Poland, and before adopting similar resolutions with regard to the stipulations of other treaties, the Council thought it advisable, in October 1920, "to determine the nature and the limits of the guarantees with regard to the protection of minorities provided for by the different treaties." The rapporteur on this question was the Italian representative, M. Tittoni. He submitted a report which was adopted by the Council and from which the following passage may be reproduced:

Up to the present time, international law has entrusted to the Great Powers the guarantee for the execution of similar provisions. The Treaties of Peace have introduced a new system; they have appealed to the League of Nations.

The Council and the Permanent Court of International Justice are the two organs of the League charged with the practical execution of the guarantee.

It may be advisable at the outset to define clearly the exact meaning of the term "guarantee of the League of Nations." It seems clear that this stipulation means, above all, that the provisions for the protection of minorities are inviolable, that is to say, they cannot be modified in the sense of violating in any way rights actually recognised, and without the approval of the majority of the Council of the League of Nations. Secondly, this stipulation means that the League must ascertain that the provisions for the protection of minorities are always observed.

The Council must take action in the event of any infraction, or danger of infraction, of any of the obligations with regard to the minorities in question. The Treaties in this respect are quite clear. They indicate the procedure that should be followed.

The right of calling attention to any infraction or danger of infraction is reserved to the Members of the Council.

This is, in a way, a right and a duty of the Powers represented on the Council. By this right, they are in fact asked to take a special interest in the protection of minorities.

Evidently, this right does not in any way exclude the right of minorities themselves, or even of States not represented on the Council, to call the attention of the League of Nations to any infraction or danger of infraction. But this act must retain the nature of a petition, or a report pure and simple; it cannot have the legal effect of putting the matter before the Council and calling upon it to intervene.

Consequently, when a petition with regard to the question of minorities is addressed to the League of Nations, the Secretary-General should communicate it, without comment, to the Members of the Council for information. This communication does not yet constitute a judicial act of the League or of its organs. The competence of the Council to deal with the question arises only

when one of its Members draws its attention to the infraction or danger of infraction which is the subject of the petition or report.

II. Measures Taken to Facilitate the Exercise of the Guarantee

(a) Institution and Development of the Procedure for the Examination of Petitions

After examining, at its meeting of October 22nd, 1920, the report submitted by M. Tittoni, the Council gave its attention to the institution of a procedure for the examination of minorities petitions. The representative of the British Empire, Lord Balfour, pointed out in the course of this meeting that the procedure instituted by the Treaties for the Protection of Minorities by the Council laid a thankless and difficult task upon the Members of the Council. "If," he said, "it were necessary to protect a minority, one of the Members of the Council would have to take upon itself the duty of accusing the State which had not fulfilled its undertakings," and Lord Balfour asked "if the Council had not a legal right to refuse to accept the guarantee for the protection of minorities and if it could not consequently make reservations with regard to the procedure to be followed by the Council in providing for their protection." As we have seen above, the Council had already at that date agreed to place under the guarantee of the League of Nations the stipulations of the Polish Minorities Treaty. The general opinion was that the Council could, in theory, refuse to guarantee the rights of minorities, but that in practice this was impossible. To quote the words of the Minutes of this meeting: "As the treaties had been accepted by the parties concerned with the utmost difficulty, it was necessary to avoid further reducing their authority."

The next day, October 23rd, 1920, M. Hymans, representative of Belgium, said that he had been much impressed by the observations made at the previous meeting by Lord Balfour on the invidious position of a Member of the Council charging another Power with an infraction of the Minorities Treaties. M. Hymans wondered whether a procedure could not be devised, such that no Member of the Council need take action unless there was a strong movement of public opinion in favour of dealing with the matter. He suggested that the Council should at its discretion submit any petitions to a Committee of three of its members. The Council decided to adopt this proposal as a rule of procedure, and the legal advisers were asked to find a formula whereby this procedure might be reconciled with the text of the treaties. The resolution approved by the Council on Octo-

ber 25th, 1920, for insertion in its Rules of Procedure reads as follows:

> With a view to assisting Members of the Council in the exercise of their rights and duties as regards the protection of minorities, it is desirable that the President and two members appointed by him in each case should proceed to consider any petition or communication addressed to the League of Nations with regard to an infraction or danger of infraction of the clauses of the Treaties for the Protection of Minorities. This enquiry would be held as soon as the petition or communication in question had been brought to the notice of the Members of the Council.

This resolution therefore constituted a rule of procedure of the Council, under which the latter made it a practice to give its Members an opportunity of examining the relevant documents with a view to assisting them in the performance of their rights and duties. M. Tittoni having asked whether, if this procedure were adopted, it would not interfere with the right of any one Member of the Council to take the initiative if he so desired, Lord Balfour pointed out that "it left untouched the principles defined in the treaties."

With regard to the communication of petitions to the States concerned, M. Tittoni's report of October 22nd, 1920, pointed out that for some time the procedure had been adopted of forwarding immediately to all the Members of the League any document forwarded for the information of the members of the Council, and the result was that the State interested, if it was a Member of the League, was informed at the same time as the Council of the subject of the petition. "This information," added M. Tittoni, "which might give the State concerned an opportunity of submitting to the Members of the Council such remarks as it might consider desirable did not, however, partake of the nature of a request of the League for information with regard to the subject of the petition, nor yet did it imply with regard to the State concerned the obligation of furnishing evidence in its defence."

The Governments of two States signatories of Minorities Treaties, Poland and Czechoslovakia, protested in 1921 against the automatic communication of minorities petitions to the Council and all the Members of the League.

In the letter which he sent to the Secretary-General on June 3rd, 1921, the Polish representative said:

> This procedure, although doubtless based on a justifiable desire to afford to those who believe themselves injured an opportunity of stating their case, possesses one very great disadvantage: it lays before the Members of the League one-sided information, which is often unreliable or biased, while the State concerned — *i.e.*, the State against whom the petition is directed — has

no opportunity of stating its case at the same time as its opponents. The possibility of subsequently refuting the accusations made against them afforded to the States concerned does not always compensate for the injury suffered from this procedure.

As a result of conversations with the representatives of Poland and Czechoslovakia, these representatives declared that they recommended the following draft resolution, which was adopted by the Council on June 27th, 1921:

With reference to M. Tittoni's report, adopted on October 22nd, 1920, at Brussels, the Council of the League of Nations resolves that:

All petitions concerning the protection of minorities under the provisions of the treaties from petitioners other than Members of the League of Nations shall be immediately communicated to the State concerned. The State concerned shall be bound to inform the Secretary-General, within three weeks of the date upon which its representative accredited to the Secretariat of the League of Nations received the text of the petition in question, whether it intends to make any comments on the subject. Should the State concerned not reply within the period of three weeks, or should it state that it does not propose to make any comments, the petition in question shall be communicated to the Members of the League of Nations in accordance with the procedure laid down in M. Tittoni's report.

Should the State concerned announce that it wishes to submit comments, a period of two months, dating from the day on which its representative accredited to the Secretariat of the League receives the text of the petition, shall be granted to it for this purpose. The Secretary-General, on receipt of the comments, shall communicate the petition, together with the comments, to the Members of the League of Nations.

In exceptional and extremely urgent cases, the Secretary-General shall, before communicating the petition to the Members of the League of Nations, inform the representative accredited to the Secretariat of the League of Nations by the State concerned.

This decision shall come into immediate effect for all matters affecting Poland and Czechoslovakia.

With regard to other States which have accepted the Treaty provisions relating to the Protection of Minorities, the Council authorises the Secretary-General to inform them of the decision taken in the case of Czechoslovakia and Poland and to ask them to state whether they wish the same procedure to be made applicable to them.

The procedure under this resolution has been accepted by all the States signatories of stipulations for the protection of minorities.

The resolutions adopted subsequently in 1923 and 1925 were aimed either at clearing up certain points or introducing certain modifications in this procedure which experience showed to be desirable, or at regularising certain usages which had grown up.

In 1923, as a result of notes submitted by the Polish and Czechoslovak Governments, the Council defined the conditions for the receivability of petitions, *i.e.*, the conditions they must fulfill to be subject to the procedure established by the resolutions of 1920 and 1921. On this point, it adopted the following resolution:

> In order that they may be submitted to the procedure established by the Council resolutions dated October 22nd and 25th, 1920, and June 27th, 1921, petitions addressed to the League of Nations concerning the protection of minorities:
>
> (*a*) Must have in view the protection of minorities in accordance with the treaties;
>
> (*b*) In particular, must not be submitted in the form of a request for the severance of political relations between the minority in question and the State of which it forms a part;
>
> (*c*) Must not emanate from an anonymous or unauthenticated source;
>
> (*d*) Must abstain from violent language;
>
> (*e*) Must contain information or refer to facts which have not recently been the subject of a petition submitted to the ordinary procedure.
>
> If the interested State raises for any reason an objection against the acceptance of a petition, the Secretary-General shall submit the question of acceptance to the President of the Council, who may invite two other members of the Council to assist him in the consideration of this question. If the State concerned so requests, this question of procedure shall be included in the agenda of the Council.

The Council further admitted the possibility of extending the period of two months fixed for observations by the Government concerned on the petitions, if this Government so requested.

Lastly, the Council decided to restrict to the Members of the Council the communication of petitions and of observations by the Government concerned, adding, however, that "communications might be made to other Members of the League or to the general public at the request of the State concerned, or by virtue of a resolution to this effect passed by the Council after the matter had been duly submitted to it." As explained above, the Government concerned had, since the Council resolution of June 1921, been informed of the petition direct, and no longer, as previously, by the indirect means of a communication to all the Members of the League. Furthermore, the Members of the Council alone having the right, according to the treaties, of drawing the Council's attention to an infraction or danger of infraction of the obligations concerning the protection of minorities, the distribution of petitions could be confined to the Members of the Council if the latter considered that the advantages of such restriction outweighed the disadvantages. The Council therefore considered that co-operation with the Govern-

ments which had accepted stipulations for the protection of minorities would be easier if the petitions, which always contain or imply a criticism of the action of these Governments, and which might even sometimes appear to be submitted for the purpose of hostile propaganda, were not widely circulated. (Minutes of the Council's meeting of September 5th, 1923.)

At its meeting on September 25th, 1923, the Sixth Committee of the Assembly also considered this question. On this Committee's proposal, the Assembly adopted the following resolution on September 26th:

Under the resolution of the Council dated September 5th, 1923, the communication of minorities petitions shall be restricted to the Members of the Council. However, by virtue of paragraph 5 of the Assembly resolution dated September 21st, 1922, any Government Member of the League can make a request to the Secretariat for petitions (with the observations of the Government concerned) which have been communicated to the Council, to be communicated also to that Government.

In order to facilitate the procedure of examining petitions by the Committees of three members, and in order to give both the minorities and the States concerned the assurance that this examination would be carried out with all the necessary impartiality, the Council in 1925 adopted a resolution with regard to the composition of the Committee of Three. The Brazilian representative, in his report of June 10th, 1925, explained the meaning of this resolution as follows:

The system of procedure established by these different resolutions of the Council provides for as careful an examination as possible of minorities questions by certain members of the Council, while reserving to the other members the right of initiative conferred upon them by the Treaties. In practice, "the Minorities Committee" has become a normal body for dealing with that part of the work of the League of Nations which concerns the protection of minorities. This makes the appointment of the members of the Council under the above resolution of very considerable importance. For this reason, it seems to me that the Council should take note of, and confirm formally, certain practices which have gradually developed in this matter.

In practice, the Acting-President of the Council, when appointing two of his colleagues in accordance with the resolution of October 25th, 1920, has usually been guided by the following principle, which I consider should always be applied: namely, the Government to be entrusted with the duty laid down in the resolution of October 25th, 1920, should not be a Government of a State neighbouring that of which the persons belonging to the minority in question are subjects, nor the Government of a State the majority of whose subjects belong from the ethnical point of view to the same people as the minority in question. It goes without saying that the Government against whom the minorities petition is directed, if represented on the Council, should not be included in the three members appointed to consider the matter.

Having in 1920 instituted a procedure not provided for in the Treaties, for obtaining information, and then in 1921 having ensured the co-operation of the States concerned so as to increase the effectiveness of this procedure, the Council desired in 1925 to give formal confirmation to certain usages which had grown up. The Council therefore decided:

I. If the Acting President of the Council is the representative of the State of which the persons belonging to the minority in question are subjects; or

The representative of a neighbouring State of the State of which the persons belonging to the minority in question are subjects; or

The representative of a State the majority of the population of which belongs from the ethnical point of view to the same people as the persons belonging to the minority in question;

The duty which falls upon the President of the Council in accordance with the terms of the resolution of October 25th, 1920, shall be performed by the member of the Council who exercised the duties of President immediately before the Acting President and who is not in the same position.

II. The President of the Council, in appointing two of his colleagues in conformity with the resolution of October 25th, 1920, shall not appoint either the representative of the State to which the persons belonging to the minority in question are subject, or the representative of a State neighbouring the State to which these persons are subject, or the representative of a State the majority of whose population belong from the ethnical point of view to the same people as the persons in question.

Such are the various decisions which have built up the present system of the examination of petitions by Committees of three members of the Council. The method of work of these Committees is dealt with in another part of the present report.

(*b*) MINORITIES SECTION OF THE SECRETARIAT

1. *Its creation and development.* — It was clear from the outset that the work undertaken by the League of Nations in regard to the protection of minorities required the creation of a special department of the Secretariat. In 1920, in the memorandum which he submitted to the Fourth Committee of the First Assembly on the personnel and organisation of the Secretariat, the Secretary-General explained the composition and organisation of the "Administrative Commissions and Minorities Section." This Section, the original organisation of which has always been retained, consists of two departments under a single head, but entirely independent of each other — the Department of Administrative Commissions and the Department of Minorities, which latter deals with questions relating to the protection of minorities by the League.

At first the Minorities Department consisted of two members of section in addition to the Director and the auxiliary personnel. Since then this department has been gradually enlarged.[1]

At the various sessions of the Assembly, the discussions in the Fourth Committee on the budget of the Administrative Commissions and Minorities Section have afforded the Director of the Section an opportunity of explaining in detail the duties and functions of the Minorities Department. As a result of the information so provided, the Fourth Committee and the Assembly have always unanimously taken the view that the credits allocated to that department represented the minimum which would enable it to carry out its work.

2. *Sources of information.* — In view of the nature of the Minorities Department's duties, its means of obtaining information must be as extensive and comprehensive as possible, not only as regards the actual situation of the various minorities, but in general as regards political, social, economic and cultural developments in the different countries which have given undertakings to protect minorities. Indeed, minority problems cannot properly be understood if they are considered apart from the political life of each country as a whole. Moreover, there are special juridical, social, economic and other aspects of these questions which become intelligible, only when regarded as part of the public life of the nation.

The importance of this aspect of the Minorities Department's work cannot be over-estimated, and all the members of the Council who have had occasion to sit on the Committees of Three have realised how difficult and sometimes impossible their task would have been had they not been able, through the Minorities Section, to procure information bearing in many cases upon details of the practical administration of the State concerned. Indeed, the question

[1] The Minorities Department now comprises six Members of Section, two members of the Intermediate Class and three secretary-shorthand-typists. The following table shows the increases in the financial requirements of the Minorities Department:

	Swiss francs
1921	175,000
1922	200,000
1923	413,000
1924	333,394
1925	330,481
1926	329,107
1927	352,739
1928	356,817
1929	333,718

(These figures apply to the Section as a whole, but the Administrative Commission's Department has not been enlarged, so that the increases in the budget estimates are accounted for by the expansion of the Minorities Department.)

as to the means of rendering the information service of the Minorities Department as comprehensive and efficient as possible has been and still is one of the chief pre-occupations of the directing organs of the Secretariat.

One of the Department's primary sources of information consists in the petitions and the observations of the Governments concerned, which it has to study. The information contained in the archives of the Department in the form of petitions and observations thereon by Governments is already considerable, and is still growing.

Apart from this source of information, however, which is the direct outcome of its own work, the Section has availed itself of other means of keeping itself regularly and constantly informed.

In the first place, a Press information service for minorities questions has been established in the Section itself, independently of the general Press information service of the Secretariat. This service regularly receives some twenty newspapers from the various countries which have given undertakings to protect minorities, including, besides those representing the interests of the minorities, newspapers which may more or less be regarded as semi-official Government organs. These newspapers are read by the various members of the Section, and one official prepares a weekly bulletin containing a summary of all articles of direct or indirect interest from the point of view of the protection of minorities. This bulletin is distributed to all the members of the department, and summaries of the articles it contains are filed in the archives of the Section. All the members of the department are thus able to follow the Press opinions in the various countries which have given undertakings to protect minorities, and may thus consult for any question the particular file containing cuttings on that question. This special Press information service has been in operation since February 1923, and the Press archives thus formed are already of considerable value.

The journeys undertaken by the Director of the Section and the members of the department in the countries subject to obligations regarding the protection of minorities constitute another means of obtaining information, to which the greatest importance has always been attached.

The character of these journeys must be made clear if their importance from the point of view of information is to be fully understood. They are not at all in the nature of enquiries, nor have they ever been taken in pursuance of a Council resolution. In all cases it was the Government concerned which first asked the Secretary-General to send to its country either the Director of the Section or a member of the Minorities Department.

Generally speaking, these journeys are of value in two ways. On the one hand, they enable the Section and the representatives of Governments, particularly the authorities and officials most directly connected with minorities questions, to keep in close touch with one another. The department has thus been able to give practical effect to the view expressed by the Assembly in its resolution of September 21st, 1922, "that in ordinary circumstances the League can best promote good relations between the various signatory Governments and persons belonging to . . . minorities . . . by benevolent and informal communications with those Governments." These relations with Governments have also greatly facilitated the work of the Committees of Three when, as often happens, they are engaged in informal negotiations with Governments with a view to solving questions submitted to them for examination.

On the other hand, these journeys have often enabled the Minorities Section to grasp the real nature and importance of minorities' grievances. Moreover, the Governments which ask for these journeys to be undertaken always grant reasonable facilities to enable the representatives of the minorities to meet the League's official.

The Minorities Section also obtains information through the visits which it regularly receives from official or unofficial representatives of Governments, from petitioners or persons belonging to minorities, and from persons interested in the problem of the protection of minorities by the League. The door of the Section is always open to those who express a wish to communicate information or an opinion on the situation of individual minorities or on the general question of minorities. These interviews as a whole constitute an invaluable source of information for the Department.

Lastly, the composition of the Secretariat itself is upon occasion the means of obtaining useful information. Certain factors in some particular minority problem, certain aspects of the political life of the country, may become much clearer as a result of personal interviews with nationals of the country than through any other means of information; and the Secretariat, through its international character and its periodical contacts both with international associations and with prominent persons from all countries, constitutes a particularly valuable source of direct information on the various questions that may arise. The officials of the Minorities Section can thus often obtain help from their colleagues on the Secretariat.

III. Discussions at the Assembly

Although, as M. Tittoni said in his report of October 22nd, 1920,

"the Council and the Permanent Court of International Justice are the two organs of the League charged with the practical execution of the (League's) guarantee," the Assembly has examined the question of the protection of minorities on various occasions during the public discussion of the annual report to the Assembly on the work of the Council during the year.

We will not attempt here to summarise these discussions on the protection of minorities, which have taken place sometimes at plenary meetings and sometimes in committee. We need only say that, despite certain criticisms, the States Members of the League have on the whole recognised that the Council has constantly acted in accordance with the provisions relating to the protection of minorities.

Nor will we examine the various proposals made to the Assembly. The Council resolution of March 7th, 1929, inviting the Governments to offer suggestions for the preparation of the present report has given those wishing to do so an opportunity of taking up again and where necessary making more explicit various proposals which had been submitted to the Assembly in past years. These proposals will be examined in another chapter of the present report.

We will therefore confine ourselves to recapitulating the decisions reached by the Assembly.

In 1921, the Assembly referred to its First Committee the following proposal by Professor Gilbert Murray, delegate of South Africa:

> That, in order effectively to carry out the duties of the League in guaranteeing the protection of minorities, the Council be invited to form a permanent commission to consider and report upon complaints addressed to the League on this matter, and, where necessary, to make enquiries on the spot.

The Committee, after taking cognisance of the resolution adopted by the Council on October 25th, 1920, regarding the examination of petitions by Committees of Three, noted the fact that, so far, no petition from a minority had been brought before the Council by those committees. It was of opinion, however, that the procedure provided for by the resolution was capable of giving satisfactory results and that in a general way it met the desire expressed in Professor Gilbert Murray's motion. Professor Murray stated that he shared this opinion, and withdrew his proposal. The Committee expressed its appreciation of the manner in which the Council, by its resolution of October 25th, 1920, had anticipated and solved the questions raised by Professor Murray's motion. The Commission then expressed its satisfaction at the steps taken by Professor Murray in the matter, which had made it possible for the Assembly to take note of the action already taken by the Council. The First Committee's report was adopted on October 4th, 1921.

The next Assembly referred two proposals to its Sixth Committee. The first, by Professor Gilbert Murray, delegate of South Africa, asked that a Committee of the Assembly should report on the chapter dealing with minorities questions in the annual report on the work of the Council, in order that the Assembly might have an opportunity of expressing its considered view on these questions. The second proposal, submitted by M. Walters, delegate of Latvia, extended the scope of the previous proposal by also asking the Committee of the Assembly to report on the general questions arising out of the protection of minorities for all the Members of the League of Nations. M. Walters added in his proposal that this report should enable the Assembly to express its considered view of these questions and to lay down the main lines for the general protection of minorities in the States Members of the League of Nations.

After exhaustive discussions, in which a large number of delegates took part, the Sixth Committee unanimously adopted the following declarations, which the Assembly approved in its resolution of September 21st, 1922:

1. While in cases of grave infraction of the Minorities Treaties it is necessary that the Council should retain its full power of direct action, the Assembly recognises that, in ordinary circumstances, the League can best promote good relations between the various signatory Governments and persons belonging to racial, religious or linguistic minorities placed under their sovereignty by benevolent and informal communications with those Governments. For this purpose, the Assembly suggests that the Council might require to have a larger secretariat staff at its disposal.

2. In case of difference of opinion as to questions of law or fact arising out of the provisions of the Minorities Treaties, between the Government concerned and one of the States Members of the Council of the League of Nations, the Assembly recommends that the Members of the Council appeal without unnecessary delay to the Permanent Court of International Justice for a decision in accordance with the Minorities Treaties, it being understood that the other methods of conciliation provided for by the Covenant may always be employed.

3. While the Assembly recognises the primary right of the minorities to be protected by the League from oppression, it also emphasises the duty incumbent upon persons belonging to racial, religious or linguistic minorities to co-operate as loyal fellow-citizens with the nations to which they now belong.

4. The Assembly expresses the hope that the States which are not bound by any legal obligations to the League with respect to minorities will nevertheless observe in the treatment of their own racial, religious or linguistic minorities at least as high a standard of justice and toleration as is required by any of the treaties and by the regular action of the Council.

5. The Secretariat-General, which has the duty of collecting information concerning the manner in which the Minorities Treaties are carried out, should not only assist the Council in the study of complaints concerning infractions

of these treaties, but should also assist the Council in ascertaining in what manner the persons belonging to racial, linguistic or religious minorities fulfil their duties towards their States. The information thus collected might be placed at the disposal of the States Members of the League of Nations if they so desire.

In 1923 the Fourth Committee decided, also on the motion of Professor Gilbert Murray, delegate of South Africa, to refer to its Sixth Committee the question of the procedure to be followed in dealing with the protection of minorities, mentioned in the relevant chapter of the Supplementary Report on the work of the Council. This Chapter set forth the procedure for the examination of petitions, as indicated in the decisions taken by the Council in 1920, 1921, and 1923, which have been analysed above.

In its report to the Assembly, the Sixth Committee explained that it had not discussed the various clauses of the Council resolution of September 5th, 1923, but had confined itself to the consideration of one specific point, namely, the clause according to which the communication to the Members of the League of minorities petitions and observations (should there be any) by the Government concerned, in accordance with the resolution dated June 27th, 1921, shall be restricted to the Members of the Council.

On this matter the Committee recalled the above-mentioned resolution, adopted by the Third Assembly on September 21st, 1922, and cited paragraph 5 of that resolution, relating to information collected by the Secretariat, which, according to the second sentence of that paragraph, "might be placed at the disposal of the States Members of the League of Nations if they so desired." The Committee unanimously agreed that this resolution was applicable to the minorities petitions which, under the terms of the Council resolution of September 5th, 1923, should be communicated to the Members of the Council.

On the proposal of its Sixth Committee, therefore, the Assembly adopted the following resolution:

Under the resolution of the Council dated September 5th, 1923, the communication of minorities petitions shall be restricted to the Members of the Council. However, by virtue of paragraph 5 of the Assembly resolution, dated September 21st, 1922, any Government Member of the League can make a request to the Secretariat for petitions (with the observations of the Government concerned) which have been communicated to the Council to be communicated also to that Government.

In 1925, the Sixth Assembly referred to its Sixth Committee the following proposal submitted by M. Galvanauskas, delegate of Lithuania:

The Lithuanian delegation proposes that the Sixth Assembly of the League should set up a special committee to prepare a draft general convention to include all the States Members of the League of Nations and setting forth their common rights and duties in regard to minorities.

During the discussion of this proposal by the Sixth Committee the question also arose of the procedure followed by the Council and the Secretariat for dealing with concrete questions relating to the protection of minorities. The Committee discussed paragraph VI of Chapter 7 of the annual Supplementary Report submitted to the Assembly. The Sixth Committee's report mentions that several speakers paid a tribute to the work accomplished by the Council in the execution of its delicate duties and emphasised the merits of the procedure at present in force. The report adds that some suggestions were made that this procedure might be improved, but it was pointed out that, whatever was done, the provisions of the Minorities Treaties must be respected. At the end of the discussion, it was proposed that the Committee should recommend the Assembly to give its formal approval to the above-mentioned part of the report, and this proposal was favourably received by various speakers.

On the proposal of its Sixth Committee, therefore, the Assembly, on September 22nd, 1925, adopted a resolution whereby it approved that part of the report on the work of the Council, the work of the Secretariat, and the measures taken to execute the decisions of the Assembly which dealt with the procedure followed with regard to the protection of minorities. The resolution added that, the Lithuanian representative having withdrawn his proposal, the Assembly requested the Secretary-General to communicate to the Council the discussion which had taken place in the Sixth Committee.

At its meeting on December 9th, 1925, the Council took note of the Assembly's resolution, and the representative of Brazil, the Rapporteur for minorities questions, then made a personal declaration to the Council.

Since then the minorities question has been raised on several occasions at the Assembly but has not been the subject of any report or special resolution.

IV. Application of the Procedure for the Examination of Petitions

The establishment of the procedure for the examination of minorities petitions is dealt with in one of the previous chapters. The object of the present chapter is to show how this procedure is at present applied.

Generally speaking, the Secretariat acts on the fundamental prin-

ciple laid down in M. Tittoni's report adopted by the Council on October 20th, 1920, that petitions from minorities are in the nature of information pure and simple. In accordance with this principle and with the intention underlying the establishment of the procedure, care has always been taken to avoid making its application a kind of *procédure contradictoire* or judicial procedure in which the petitioner and the Government concerned appear as two parties to be heard by the League of Nations. The Council has established for minorities petitions a *sui generis* procedure adapted to the nature of the right of petition established by M. Tittoni's report. The object of this procedure is, not to enable the Council as it were to settle a lawsuit between two parties, but to ensure that reliable information as to the manner in which the signatory States to the Minorities Treaties are carrying those treaties into effect is laid before the Members of the Council. This information is then carefully considered by a Committee of Three and is used where necessary as a basis to enable the Members of the Council to exercise their right to draw the Council's attention to cases of infraction or danger of infraction of the treaties if they think it desirable.

It is in this light that the present procedure and its application should be considered. Any comparison between it and ordinary judicial procedure under the internal law of individual States might give rise to misunderstanding and lead to erroneous conclusions. The respective aims of the two procedures being different, they cannot be expected to be subject to the same guarantees or the same formalities.

In order to show as clearly as possible how the procedure in respect of minorities petitions is applied at the present time, we will consider in turn the following points:

(*a*) Acceptance of Petitions.
(*b*) Communications to the Government concerned for any Observations.
(*c*) Communication to the Members of the Council.
(*d*) Examination by the Committees of Three.
(*e*) Replies to Petitioners.

(*a*) ACCEPTANCE OF PETITIONS

When a petition from a minority is received by the Secretariat, it is submitted to a preliminary examination by the Minorities Section to ascertain what decision should be taken by the Secretary-General regarding its acceptance. The object of this examination is to decide, without examining the case on its merits, whether the petition fulfils the five conditions of acceptance laid down in the Council resolution of September 5th, 1923.

This work is of a very delicate nature. Not only must each petition be examined with scrupulous care, but in many cases the interpretation to be placed on the conditions governing acceptance and upon the relevant terms of the Minorities Treaty must also be considered. The fact that, in the procedure as established, petitions are not regarded as actual requests but as sources of information pure and simple means that the conditions governing acceptance must be given a very broad interpretation.

These conditions relate to:

(1) The origin of the petition: "Petitions must not emanate from an anonymous or unauthenticated source";

(2) Form: "Petitions must not be worded in violent language";

(3) Contents: Petitions: (*a*) must have in view the protection of minorities in accordance with the treaties; (*b*) must not request the severance of political relations between the minority in question and the State of which it forms a part; (*c*) must contain information or refer to facts which have not recently been the subject of a petition submitted to the ordinary procedure.

As regards the origin of petitions, it should first be observed that, in order to be accepted, they need not necessarily emanate from the minority concerned. Petitions from persons or organisations which not only did not belong to the minority concerned but did not even belong to the country referred to in the petition have often been declared acceptable, provided the source was not anonymous or unauthenticated. As to the question under what circumstances the source may be regarded as anonymous or unauthenticated, it is very difficult to lay down precise rules, and the Secretary-General uses his own discretion, taking into account the circumstances of the case. In principle, any signed petition is regarded as emanating from an authenticated source. In certain cases, petitions sent by telegram have also been regarded as acceptable before being confirmed by letter.

As regards the form of petitions, the rule laid down by the Council on this point is also given a very broad interpretation. Petitions containing abusive language or terms incompatible with the dignity of the Governments concerned are alone rejected as not fulfilling this condition of acceptability. The Secretary-General takes into account the fact that petitions may come from persons belonging to populations of primitive culture, in which case obviously their wording cannot be judged according to the strictest standards. Moreover, the Governments concerned very rarely question the acceptability of petitions on the ground that their form was not in accordance with the Council's rules.

As regards the three conditions relating to the contents of petitions, the Secretary-General has merely to carry out a cursory examination of the facts and information submitted by the petitioner. He cannot verify any of the facts or even undertake to examine the substance of the question raised in the petition. In principle, when the statement of facts in a petition is *prima facie* in accordance with the three conditions required, it is declared acceptable.

If a petition is declared unacceptable, no action is taken in regard to it. The petitioner is not informed of the decision, for the reason already indicated, that he is regarded not as an applicant but purely and simply as a source of information for the Members of the Council. For this reason, a petition is regarded as unacceptable only if it obviously does not fulfil one of the conditions laid down by the Council. On the other hand, when the Secretary-General declares a petition acceptable, it is always open to the Government concerned to dispute the justice of this decision. If it does so, the question is referred to the President of the Council, who may request two of his colleagues to examine it with him. Again, the Government concerned if not satisfied with the President's decision may ask for the question of the acceptability of the petition to be placed on the Council's agenda. So far, only one case has occurred where the Government concerned has not accepted the President's decision and has asked for the question of the acceptability of a petition to be placed on the Council's agenda.

It is difficult to lay down a precise line of demarcation between petitions of minorities in the strict sense of the term and communications of other kinds sent to the League on the subject of the protection of minorities; nevertheless it is estimated that the total number of petitions received by the League Secretariat since September 1921 is about three hundred.[1] Of these petitions, some hundred and fifty have been declared unacceptable, and the rest have been submitted to the procedure of examination laid down by the Council.

(*b*) COMMUNICATION OF PETITIONS TO THE GOVERNMENT CONCERNED

Petitions declared acceptable by the Secretary-General are communicated to the Government concerned for any observations it may desire to make. A very wide latitude is allowed in the matter of the time-limits — laid down by the Rules of Procedure, *i.e.*, three weeks within which the Government concerned should inform the

[1] Not including the petitions addressed to the Council in accordance with the procedure stipulated in the Convention relating to Upper Silesia (cf. pp. 176–77 of the present document).

Secretary-General whether it does or does not intend to present observations, and two months within which these observations must be sent.

In practice, if the Government concerned does not inform the Secretary-General within three weeks that it does not intend to send any observations, it is assumed that it will do so, and the petition is not sent to the Members of the Council before the expiration of the period of two months. Moreover, when any Government considers it necessary to ask for an extension of the period of two months, the extension has invariably been authorised by the President of the Council.

The petition is not communicated in advance to the Government concerned in "exceptional and extremely urgent cases" or when a petition comes from the Government of a country Member of the League of Nations. In such cases, the petition is communicated simultaneously to the Members of the Council and to the Government concerned. The Secretary-General is only required, before communicating the petition, to inform the representative of the State concerned accredited to the League of Nations. The Council has not laid down any rule defining what constitutes the "exceptional and extremely urgent" character of a petition. The Secretary-General uses his own discretion in such cases.

(*c*) COMMUNICATION OF PETITIONS TO MEMBERS OF THE COUNCIL

Petitions are communicated to Members of the Council for information, either together with the observations of the Government concerned, as soon as the Secretariat receives them, or immediately upon the Government concerned announcing that it does not propose to submit observations. This communication of petitions to Members of the Council, which, as explained in a previous chapter, was instituted by M. Tittoni's report adopted by the Council on October 20th, 1920, does not constitute a juridical act, since the Council only becomes competent to examine the question if one of its Members draws its attention to the infraction or danger of infraction of the Minorities Treaty to which the petition refers. The petitions are thus communicated purely for information and are not sent to the Council as a body but to each of its Members individually. For that reason, documents containing petitions with the observations of the Government concerned are regarded, not as documents communicated to the Council, but as documents communicated to the *Members of the Council.*

Petitions and the observations of the Government concerned may

be communicated to the Members of the League or to the public at the request of the Government concerned or in virtue of a resolution taken by the Council to that effect. Moreover, any Government of a State Member of the League may submit a request to the Secretariat that petitions and the observations of the Government concerned which are communicated to the Members of the Council should be communicated to it also. In response to a request, certain Members of the League are sent regularly either all petitions communicated to the Members of the Council or only those relating to certain countries or certain minorities, as they desire.

(*d*) EXAMINATION OF PETITIONS BY THE COMMITTEES OF THREE

As soon as a petition, accompanied by the observations of the Government concerned, is communicated to the Members of the Council, the Minorities Section approaches the President of the Council with a view to the setting up of the Committee of Three which is to examine the petition. When the three members of this Committee have been appointed, the Minorities Section prepares for their use a memorandum containing a summary of the petition and of the observations of the Government concerned. This memorandum, which is wholly impartial, is intended to facilitate the Committee's work by presenting as clearly as possible the various points raised by the petition and coming within the scope of the protection of minorities provided for by the treaty (very often the points raised in petitions do not come within that scope), together with the observations on each point by the Government concerned. The Secretariat, in order to afford the members of the Committee of Three all the assistance they may desire, then takes steps to collect the fullest possible information on the facts of the case and to study the points of law raised in the petition.

The meetings of the various Minorities Committees which are in existence simultaneously are generally held during sessions of the Council, though they are also held between those sessions, as it is not always easy to find time during Council sessions for the examination — sometimes a very detailed and lengthy procedure — of the questions raised. These questions are nearly always of a delicate nature and require the most thorough preparation both by the Secretariat and by the Members of the Council. Any of the Members of the Council may, if necessary, be required to sit on the Committees of Three.

The examination of a petition by a Minorities Committee is not, of course, confined to the actual meetings of the Committee. Each

member of the Committee must proceed to examine the petition without delay as soon as the document concerning it has been communicated to the Members of the Council. Naturally, the Secretariat must begin its work as soon as possible, even before the Members of the Council have been communicated with. The discussion, even at the first meeting of the three members of the Committee, is thus — except perhaps in very urgent cases — based on a considerable amount of preparatory work.

The Committees meet privately, no formal Minutes being taken, and each is free to adopt its own procedure. As a rule, the Director of the Minorities Section makes a verbal statement at the beginning of the meeting on the points which, in his opinion, require special consideration. Often, at their request, he offers the members of the Committee suggestions as to the possible courses which may be taken in each case.

Lastly, the Section has to see that the Committee's resolutions are carried into effect. All communications, whether verbal or written, between the Committees and the Governments concerned are effected through the intermediary of the Minorities Section. Quite often the Committees ask the Secretariat to prepare for them special memoranda enabling them to obtain a more accurate idea of the situation or arrive at a decision as to the interpretation of certain clauses of a treaty or legislative or administrative provisions of the State concerned.

Generally speaking, the object of the examination of a petition by the three Members of the Council appointed for the purpose is to consider whether one or more Members of the Council should exercise their right to bring the question to the Council's notice. This right may also be exercised by any individual member of the Committee, whatever view his colleagues may take. When once the question has been brought before the Council, it is dealt with in accordance with the normal procedure, that is to say, the Council considers it on the basis of a report submitted to it by its Rapporteur for minorities questions.

In most cases, the members of the Committees of Three have found that, although the circumstances do not in their opinion justify the placing of the question on the Council's agenda, they do not permit of its being dropped altogether. The members of the Committee may consider, for example, that the information at their disposal does not enable them to decide whether there has or has not been an infraction or danger of infraction of the treaty; or they may feel that they could obtain favourable consideration of the minorities' wishes by approaching the Government concerned in informal and friendly

manner. The Committee then, acting through the Minorities Section, enters into informal negotiations with that Government with a view either to obtaining further information or to securing a satisfactory settlement of the matter. The elasticity of this system enables the various Committees to adapt their methods to the special circumstances of each case. A system of genuine and friendly co-operation has thus grown up between the League, acting through the Committees of Three, and the Governments concerned, with a view to the equitable and satisfactory settlement of such cases. This explains, too, why far fewer questions are submitted to the Council by the Minorities Committees than are the subject of informal negotiations between these Committees and the Governments concerned.

The policy of the Committees of Three of settling the various questions submitted to them by direct and informal negotiations with Governments is based on a consideration which all who have had occasion to sit on those Committees will doubtless recognise as wholly justifiable, namely, that, for the purpose of settling the majority of the questions raised in petitions, informal and friendly negotiations between a Committee of Three and the Government concerned constitute a much more effective method than public discussion by the Council. Nevertheless, despite the very natural tendency to settle some questions by direct negotiation, these Committees have never hestitated to refer to the Council questions which, in their opinion, required to be considered by that body, or questions for the settlement of which they considered action by the Council more likely to be successful than unofficial action on their own part. It may be of interest here to mention that, since September 1921, the various Committees of Three which have examined the petitions declared acceptable have held 190 meetings.

When a question is placed on the Council's agenda, the documentary information on the subject automatically becomes public. The petitioner may then note the observations submitted by the Government concerned and the Council's discussions, as the examination of the case always takes place in public. When the question is not submitted to the Council, either because the Committee of Three regards the Government's explanation as satisfactory or because a settlement has been reached by informal action on the part of the Committee, the documents remain confidential and no communication is made to the petitioner, or to the Council, or to the public. In some cases the Committee has decided, with the consent of the Government concerned, to make the documents public. In other cases it has suggested to the Government that its observations should be sent to the petitioner, or — as has most frequently happened — it has authorised the Secretary-General to make this communication.

At first the Committees of Three sometimes sent negative reports to the Council, *i.e.*, reports informing it that the Committee had not considered it necessary to bring the question submitted to it to the Council's notice. This method of procedure was applied in three or four cases, but was eventually abandoned, and the Committee of Three now merely informs the representative of the State concerned that it has concluded its examination of the question.

It should again be observed that the fact that a question has been referred to a Committee of Three does not affect the right of any other Member of the Council not a member of the Committee to bring the question to the Council's notice if it thinks fit. All the Members of the Council receive the document containing the petition and the Government's observations, and they may, if they so desire, ascertain through the Secretariat the result of the Committee's examination of the petition and submit observations to the Committee, either officially or unofficially. The Minorities Section also communicates to all Members of the Council, some weeks before the opening of each session, a list of minorities questions which will be examined by the Committees of Three during the session. In comparing these lists, the Members of the Council may easily ascertain which are the petitions no longer under examination by the various Committees and which have been made the subject of informal negotiations between the Committees and the Governments concerned without having been brought to the notice of the Council itself.

The proceedings of the Committees of Three and the conclusions they reach are thus — except when a question is placed on the Council's agenda — not divulged either to the petitioner or to the public. The members of the Council not represented on a Committee may, however, ascertain the action taken by the Committee in regard to any petition referred to it.

(*e*) REPLIES TO PETITIONERS

As a rule the Secretariat merely acknowledges receipt of the petitions it receives. If the petition is considered acceptable, the acknowledgment of receipt does not mention the fact. If the petitioner writes to the Secretariat to ask what action has been taken in regard to the petition, the Secretariat's reply states that the petition has been dealt with in accordance with the procedure prescribed by the Council, but does not specify whether it has been judged acceptable or not. As a rule, a mere acknowledgment of receipt is sent when petitions are found unacceptable.

When, however, there is reason to believe that the petitioner is

unaware of the conditions of acceptance prescribed by the Council, the Secretariat usually draws the petitioner's attention to this point and communicates the actual text of the conditions. Nevertheless, it is always very careful to ensure that the information so given can never be construed as advice to the parties concerned on the manner of submitting their petitions.

As already indicated the observations of the Government concerned are not communicated to petitioners unless the Committee of Three so decides, with the consent of the Government concerned.

As regards the work and the resolutions of the Committees of Three, little need be added here to what has already been said above. When the question is closed without reference to the Council, no communication is made to the petitioner, and if the latter asks for information as to the result of the consideration of the petition by the Committee, he is informed, as a rule, that no Member of the Council has so far, acting in virtue of the Minorities Treaties, drawn the Council's attention to the subject of the petition.

Further, so far as the procedure of the Committee of Three is concerned, it is immaterial whether a petition comes from the minority concerned or from a third party not directly interested in the question, as the informative character of the petition remains unaffected, whether the petition comes from persons belonging to the minority itself or not.

PART III

I. General Considerations

The foregoing account of the origins and development of the work of the League in relation to the protection of minorities brings out certain general principles of great importance.

In the first place, it is clear that the system which was devised for guaranteeing the stipulations of the treaties and for making that guarantee effective was planned with a view to avoiding one great difficulty which had been felt in connection with the parallel clauses of the Treaty of Berlin of 1878. The obligations relating to the treatment of minorities undertaken by certain States by the terms of that Treaty were undertaken to the individual States signatory of the Treaty. Accordingly, any question concerning the execution of those obligations was the concern of the individual States in question. The result was inevitably that any action taken by the States in question for the benefit of the minorities was likely, in fact, to be based or, at best, was certain to be generally believed to be based, not simply on their desire to see that the rights of the minority were properly safe-

guarded, but on considerations arising from their individual political interests. The authors of the Minorities Treaties found in the creation of the League the means of escaping from this difficulty, and the system which they devised was intended to ensure that, in the future, action taken in defence of the rights of minorities should, both in fact and in public opinion, be taken without reference to the special interests of any individual Powers. At the same time, they secured the not less essential result that the loyalty of the minorities to the State of which they form a part should not be exposed to the special temptations arising from a faculty of direct intervention given to a neighbouring State with which they might have special affinities of race or of sentiment. The purpose of the treaties was to ensure that the minorities should, for the future, enjoy conditions which would enable them, without loss of their religious or cultural heritage, to bring to the State of which they now form a part, that loyal co-operation on which the Assembly laid stress in its resolutions of 1922. In the view of the Committee, it is of great importance that nothing should be done to impair these principles.

In the second place, both the authors of the treaties, and the Council in developing its procedure, have been at pains to avoid creating a situation which would place the Government of any State having undertaken obligations, and any minority or member of a minority within that State, in a position analogous to that of parties opposed to one another in legal or arbitral proceedings.

The authors of the treaties deliberately rejected any proposal which could give countenance to the conception of any minority forming a separate corporation within the State. If the Council decided that petitions relating to the treatment of minorities, whether received from members of a minority or not, should, under certain conditions, be communicated to its members, it made it clear that it regarded these petitions solely as sources of information, and that the only parties to any action which might arise therefrom would be the Government concerned and the Governments of individual Members of the Council or the Council itself. Here, again, we have a principle which is not only clearly a part of the system as laid down in the treaties, but whose maintenance is essential to their satisfactory working on behalf of the Governments and the minorities concerned.

Thirdly, the history of the Council's action in relation to the protection of minorities shows that the system which it has developed is based, in a way which was not specifically foreseen in the treaties themselves, on collaboration between the Council and the countries concerned. The latter have agreed to a system under which, in practice, they freely communicate either to the Council in the form

of observations on petitions, or to the Committee of Three in reply to particular enquiries, whatever information is judged by those bodies to be necessary. On a number of occasions, different countries have spontaneously communicated to the Council detailed statements regarding the action they have taken in execution of specific stipulations of the minorities treaties. The Committee think it desirable to underline the importance of this collaboration, and to express the hope that it may be not only maintained but extended. They feel that this free communication of information, on its own initiative, by the State concerned is in the interests, not only of the Council, but of the State itself, whose efforts are thus better understood and appreciated by the Members of the Council. It is in the same spirit that the Committee put forward at a later stage in this report a suggestion regarding the publicity which might be given, with the concurrence of the country concerned, to conclusions reached by the Committees of Three.

II. Conclusions and Recommendations

The Committee has made a careful examination of the various suggestions it has received. It has not thought it necessary to mention them all in the ensuing considerations. Some of the suggestions were outside its terms of reference or were clearly in contradiction with the general principles on which the League's activities in connection with the protection of minorities are based.

The Committee desires to submit the following considerations and conclusions:

The proposals made may be classified under the following headings:

(*a*) Proposals of a general character.
(*b*) Transmission of petitions.
(*c*) Relations with petitioners.
(*d*) Composition and operation of the Committees dealing with petitions.
(*e*) Information and publicity.

(*a*) Proposals of a general character

These proposals relate firstly to the constitution of a permanent commission for supervising the situation of minorities, and secondly to the rôle of the Permanent Court of International Justice in regard to the application of the minorities treaties.

The Committee realised the importance of these proposals. It examined them in detail, both in the light of the treaties and in that

of the League's work and of the records of its activities in the sphere of the protection of minorities.

As regards the first suggestion mentioned above, it should be observed that the treaties contain no provisions permitting the Council to exercise constant supervision with regard to the situation of minorities, *i.e.*, a supervision capable of being exercised apart from cases in which a member of the Council has drawn the latter's attention to an infraction or danger of infraction of the treaties. It is by the latter that the functions of the Council are specified. Modifications in the treaties require the assent of the Council (acting by a majority) and the Council can take action when an infraction of the treaty stipulations (or danger thereof) is brought to its notice by one of its members. It is through the working of these provisions that the operation of the guarantee of the League of Nations under which the minority clauses are placed is ensured. Any supervision outside the examination of cases of infraction, or danger of infraction, which might be brought to the Council's notice in conformity with the treaties would be outside the scope of the latter, and it could not be instituted without the consent of the parties to the treaties. The suggestion in question would, moreover, modify to such an extent the conception on which the treaties are based that the Committee does not feel able to make a recommendation to this effect.

As regards the rôle of the Permanent Court of International Justice, the Committee can only refer to the stipulations of the Minorities Treaties and the right which they give any Member of the Council to refer to the Court disputes which may arise between it and the State concerned in regard to any question of law or fact concerning the stipulations relative to the protection of minorities. The Committee recalls the fact that on September 21st, 1922, the Assembly adopted the following resolution in this connection:

> In case of difference of opinion as to questions of law or fact arising out of the provisions of the Minorities Treaties between the Government concerned and one of the States Members of the Council of the League of Nations, the Assembly recommends that the Members of the Council appeal without unnecessary delay to the Permanent Court of International Justice for a decision in accordance with the Minorities Treaties, it being understood that the other methods of conciliation provided for by the Covenant may always be applied.

(*b*) TRANSMISSION OF PETITIONS

The proposal has been made that petitions should be addressed to the Government concerned, with a request that they should be forwarded to the Secretariat within a specified period, if the Govern-

ment does not desire to reply to the petitioner direct. Furthermore, if the Government does not succeed in giving satisfaction to the petitioners, the latter should, after receiving a reply, give their reasons for maintaining their petition and may at the same time ask the Government concerned to forward all the correspondence exchanged to the Secretariat within a specified period after the receipt of their final rejoinder. The Government would have to comply with this request and notify the petitioners of the fact, at the same time communicating to them any supplementary observations it may think fit to add to the dossier.

The Committee does not feel able to recommend the adoption of this proposal. As recalled above, a petition addressed to the League of Nations by persons whether belonging to a minority or not, is a source of information and nothing more. But the procedure proposed, having to some extent the character of a debate before a tribunal, is not compatible with the treaties. The Committee thinks, moreover, that such a procedure would make it more difficult to remedy the grievances of minorities, since it would diminish the possibility of friendly negotiations between the Government concerned and the Committee of Three. The Committee has reason to believe that the proposed change would not be welcomed either by the Governments or by the minorities themselves.

(*c*) RELATIONS WITH THE PETITIONERS

It has been indicated above that the Secretary-General, when he has reason to believe that the petitioner is not aware of the conditions of receivability fixed by the Council, draws his attention to this point and in some cases communicates to him the text of these conditions. The Committee recommends that a further step should be taken in this direction; it considers that every time a petition is declared irreceivable the petitioner should be notified. The Secretary-General would continue the present practice of attaching to this communication, whenever it seems advisable to do so, the text of the conditions of receivability.

Furthermore, the Committee thinks there would be no grave objection, after examination of a petition by the Members of the Council appointed for this purpose had been concluded, to the Secretary-General's informing the petitioner that no Member of the Council had drawn the latter's attention to the question dealt with in the petition. The Committee makes no recommendation on this point, however. The fact that in the majority of cases the petitioner would receive a communication informing him that the question

raised had not been placed on the Council's agenda might create the erroneous impression that nothing had been done; but, as has been explained above, the Members of the Council appointed to examine the petition often obtain from the Government concerned the adoption of measures favourable to the persons belonging to the minorities, without there being any need of drawing the Council's attention to the question.

(*d*) COMPOSITION AND OPERATION OF THE COMMITTEES DEALING WITH PETITIONS

Various suggestions have been made regarding the composition of the committees appointed to examine petitions. The Committee does not desire to recommend any modifications in this respect. Originally, the Committees of Three were set up in order to give the Members of the Council, the minorities and the States concerned, the assurance that any petition judged receivable would be submitted to a special and conscientious examination. Now, not only does this examination permit the Members of the Council to decide whether they will bring a question before the Council in conformity with the treaties, but, as explained above, the Committee often endeavours, by means of unofficial negotiations with the State concerned, to induce the latter to take appropriate measures to deal with the situation. This practice, which has added to the original duties of the three members of the Committee, has been generally recognised; it has been explained to the Assembly, and met with the approval of that body, and it has been concurred in by the States having minorities. This practice has grown up as an addition to the original system to which the resolutions of October 25th, 1920, and September 5th, 1923, referred. It has enabled the Committees to obtain the friendly co-operation of the States concerned, in dealing with the questions under examination. In these circumstances, the Committee does not feel able to put forward any proposals liable to compromise the useful work which is thus being done in the best interests of the minorities. It is, moreover, the general practice of the League of Nations not to sanction essential modifications in its procedure without previously ascertaining that the States concerned have no objection. Apart from these reasons, there would be no practical advantage in enlarging the Committee. It is true that the Council had only eight Members when the Committee of Three was instituted, and it might therefore be argued that a committee of five members would maintain the original proportion now that the Council has fourteen Members. Despite this argument, the Committee sees no advantage in increasing to five the

number of members of the Committee of Three. The Committee would not, however, desire to pronounce definitely against such an enlargement of the Committee of Three if there were a general feeling in favour of it, and provided, of course, that the Governments concerned had no objection. But it believes that the smaller this Committee is the greater will be the chance of the unofficial discussions with the Governments concerned leading to satisfactory results.

In particular, the Committee cannot recommend that the petitions should be referred to a committee consisting of all the Members of the Council. In practice, it would be impossible to distinguish between the Council itself and a committee thus composed. It could not be maintained that a step taken by such a committee would not be a step taken by the Council. The examination of a petition by a committee consisting of all the Members of the Council would therefore be equivalent to examination by the Council itself — and this without a Member of the Council having drawn the latter's attention, in conformity with the treaties, to an infraction or danger of infraction. The States bound by stipulations for the protection of minorities would be justified in regarding such a measure as a departure from the system accepted by them in virtue of the treaties.

With this question is bound up that of the participation in the proceedings of a Committee of Three of States which have or might be thought to have a special interest in the question dealt with in the petition submitted to the Committee. It has been explained above that the purpose of the treaties is to prevent the direct intervention of any particular State for the protection of minorities, and to substitute an international guarantee for the guarantee of the Great Powers provided for in the previous treaties, there being a risk that a particular State would only intervene when its own interests led it to do so. Moreover, any member of the Council who does not belong to a Committee of Three retains [the] right given to him by the treaties to draw the Council's attention to any case of infraction or danger of infraction of the provisions relative to the protection of minorities. Not only does he receive a copy of all the receivable petitions and of the observations of the Governments concerned, but he can inform himself through the Secretariat of the treatment of the petition in the Committee of Three, and, if necessary, submit his observations to the Committee either formally or informally.

The Committee also feels unable to recommend the admission to the Committees of Three, even in an "advisory capacity," of a representative of the State of which the persons belonging to the minority affected are nationals, or of the State the majority of whose population belongs to the same race as the persons forming part of

the said minority. The representation of these two States in the Committee would give the proceedings the character of a debate before a tribunal, which would be incompatible with their nature and their purpose. This purpose is, as we have already said, to enable the Members of the Council to determine whether a minority question should be brought before the Council and also, in certain cases, to give the Committee an opportunity of inducing the State concerned, by means of unofficial representations, to take measures favourable to the minorities.

It has also been suggested that the Committees of Three might be helped by an advisory commission to which they might, if necessary, refer certain questions. This suggestion does not appear acceptable for the following reasons:

Experience has shown that the Secretariat of the League of Nations is able to obtain and supply to the Committees of Three the information which they may require on various points, and also to provide them with all necessary assistance. Moreover, apart from the fact that it would be difficult to say what are the qualifications of an expert in the matter of minorities, the Committee has serious doubts whether an advisory commission such as that proposed would be compatible with the spirit of the Minorities Treaties. An opinion given by this commission would, in practice, considerably reduce the responsibility of a State drawing the Council's attention to an infraction. But this responsibility is and should remain full and entire. The State assuming it must act on its own convictions and must not simply base itself on the conclusions of a group of experts.

The Committee therefore recommends the maintenance of the present practice as regards the examination of petitions. It considers that the meetings of the Committees of Three should normally take place during the sessions of the Council so as to permit of the personal attendance of the members of the Council. Meetings might however, also be held, as is at present the case, in the interval between the Council's sessions; and the members of a Committee of Three may take a decision to this effect whenever they think it advisable for the examination of a particular petition.

(*e*) INFORMATION AND PUBLICITY

Various suggestions have been made on this subject. Before considering them, the Committee desires to say that no innovation as regards the present procedure ought either to go beyond the scope of the treaties or be likely to hinder the success of the very useful work done by the Committees of Three when they endeavour to remedy

particular situations by means of unofficial negotiations with the Governments concerned. Accordingly, the Committee feels unable to recommend that the Committees of Three should sit in public or should publish Minutes. It does, however, desire to propose that each Committee, at the conclusion of its work, should address to the other Members of the Council, for their individual information, a letter communicating the results of their proceedings. This communication would be consistent with the provisions of the Council's resolution of October 25th, 1920, which provides that the examination of a petition by a Committee of Three is done with a view to assisting Members of the Council in the exercise of their rights and duties as regards the protection of minorities. The Committee further recommends that the Secretary-General should circulate once a year to all the Members of the Council, for their individual information, a document containing all the communications thus made.

As regards the information of the public, the Committee recalls that, in its resolution of September 5th, 1923, the Council stipulated that "the communication of petitions and of observations (should there be any) by the Government concerned may be made to other Members of the League or to the general public at the request of the State concerned or by virtue of a resolution to this effect passed by the Council after the matter has been duly submitted to it." The Committee further proposes that the Council should instruct the Secretary-General to publish each year statistics of the number of petitions received by the Secretariat, indicating the number of petitions declared irreceivable, the number of petitions declared receivable, the number of Committees of Three set up to examine the latter, and the number of meetings held by these committees.

The Committee desires to add that it attaches great importance to the question of publicity; but emphasises that the success of the negotiations undertaken by the Committees of Three in the best interests of the persons belonging to the minorities seems to it still more important. It is in order to safeguard these negotiations that the Committee does not recommend a more detailed publication by the Secretary-General than that proposed above. It desires to point out, however, that the results of an examination of a petition by a Committee of Three may always be published with the consent of the representative of the State concerned; and the Committee sincerely hopes that the States in question will, to an increasing degree, find it possible to consent to such publication. The consent in question would, for example, permit of the publication of the letter of the Committee of Three intended for the information of the other

Members of the Council, or of any other text which might appear suitable.

* * *

Such are the conclusions to which their investigations have led the members of the Committee. They venture to hope that these conclusions will meet with their colleagues' approval. They are convinced that the adoption of the suggestions which they submit would constitute a positive contribution to perfecting the system set up by the Council in order to give effect to the guarantee which it has undertaken. The Committee feels that these proposals are in the interests both of the States concerned and of the minorities, and that they are inspired by the spirit of progressive co-operation which constitutes the true foundation of the League's work.

INDEX